

Exhibit A

438-015-0005

Definitions

- (1) “Approved fee” means an attorney fee paid out of a claimant’s compensation.
- (2) “Assessed fee” means an attorney fee paid to a claimant’s attorney by an insurer or self-insured employer in addition to compensation paid to a claimant.
- (3) “Attorney” means a member of the Oregon State Bar.
- (4) “Attorney fee” means payment for legal services performed on behalf and at the request of a claimant under ORS Chapter 656.
- (5) **“Client paid fee” means an attorney fee paid by an insurer or self-insured employer to its attorney.**
- (6) “Compensation” means all benefits, including medical services, provided for a compensable injury to a subject worker or the beneficiaries of a subject worker pursuant to ORS Chapter 656.
- ([6]7) “Cost bill” means an itemized statement from the claimant of the amount of expenses and costs for records, expert opinions, and witness fees incurred as a result of the litigation involving a claim denial under ORS 656.386(1).
- ([7]8) “Denied claim” means a claim for compensation which an insurer or self-insured employer refuses to pay on the express ground that the injury or condition for which compensation is claimed is not compensable or otherwise does not give rise to an entitlement to any compensation or a claim under ORS 656.386(1)(b)(B), (C) or (D) to which the insurer or self-insured employer does not timely respond.
- ([8]9) “Expenses and costs” reimbursable under ORS 656.386(2) mean reasonable expenses and costs incurred by the claimant for things and services reasonably necessary to pursue a matter, but do not include attorney fees. Examples of expenses and costs referred to include, but are not limited to, costs of records, expert witness opinions, witness fees and mileage paid to execute a subpoena and costs associated with travel.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.308, 656.382, 656.386, 656.388 & 656.726(5)

Exhibit B

438-015-0010

General Principles

- (1) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board.
- (2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS **656.262(11)(a)**, 656.307, 656.382, 656.383 and 656.386.
- (3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.
- (4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:
 - (a) The time devoted to the case for legal services;
 - (b) The complexity of the issue(s) involved;
 - (c) The value of the interest involved;
 - (d) The skill of the attorneys;
 - (e) The nature of the proceedings;
 - (f) The benefit secured for the represented party;
 - (g) **The necessity of allowing the broadest access to attorneys by injured workers;**
 - (h) **The fees earned by attorneys representing the insurer/self-insured employer, as compiled in the Director's annual report under ORS 656.388(7) of attorney salaries and other costs of legal services incurred by insurers/self-insured employers pursuant to ORS Chapter 656;**
 - (i) ~~[t]~~The risk in a particular case that an attorney's efforts may go uncompensated [and];
 - (~~[h]~~**i**) The contingent nature of the practice of workers' compensation law; and
 - (**k**) The assertion of frivolous issues or defenses.
- (5) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.307, 656.382, 656.383, 656.386 & 656.388

Exhibit C

438-015-0033

Attorney Fee Award Under ORS 656.262(14)(a)

(1) In accordance with ORS 656.262(14)(a), a reasonable hourly rate for an attorney's actual time spent during a personal or telephonic interview or deposition conducted under that statute is \$[275]350. **The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.**

(2) If the claimant is represented by an attorney, the insurer or self-insured employer shall pay a reasonable attorney fee award, which is based upon the hourly rate prescribed in section (1) multiplied by the actual time spent by the attorney during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a).

(3) To obtain the attorney fee described in section (2), the claimant's attorney shall submit a bill to the insurer or self-insured employer within 30 days of completion of the personal or telephonic interview or deposition. The bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

- (a) An itemization of the actual time spent by the claimant's attorney during the personal or telephonic interview or deposition;
- (b) The claimant's attorney's signature confirming that the claimed time was actually spent during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a); and
- (c) A copy of the executed retainer agreement, unless previously provided.

(4) If the parties disagree regarding the attorney's bill under section (3), a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless it files a request for hearing, the insurer or self-insured employer must pay the attorney fee described in section (3) as an award under this rule within 30 days of its receipt of the bill.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.262(14)(a)

Exhibit D

438-015-0115

Fees for Attorneys Representing Insurers and Self-Insured Employers

(1) A requested client paid fee shall:

(a) Be reasonable, considering the factors prescribed in OAR 438-015-0010(4), to the extent such factors are relevant to a client-paid fee; and

(b) Not exceed that agreed upon in the retainer agreement.

Statutory/Other Authority: ORS 656.726(5)

Statutes/Other Implemented: ORS 656.388(4), (5)