

A-Engrossed
Senate Bill 404

Ordered by the Senate April 27
Including Senate Amendments dated April 27

Sponsored by COMMITTEE ON RULES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes payment of certain reasonable fees, expenses and costs associated with litigation of workers' compensation claim if claimant prevails against claim denial. **Caps payment at \$1,500 unless claimant demonstrates extraordinary circumstances justifying payment of larger amount.**

A BILL FOR AN ACT

1
2 Relating to workers' compensation claims; creating new provisions; and amending ORS 656.386.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 656.386 is amended to read:

5 656.386. (1)(a) In all cases involving denied claims where a claimant finally prevails against the
6 denial in an appeal to the Court of Appeals or petition for review to the Supreme Court, the court
7 shall allow a reasonable attorney fee to the claimant's attorney. In such cases involving denied
8 claims where the claimant prevails finally in a hearing before an Administrative Law Judge or in
9 a review by the Workers' Compensation Board, then the Administrative Law Judge or board shall
10 allow a reasonable attorney fee. In such cases involving denied claims where an attorney is instru-
11 mental in obtaining a rescission of the denial prior to a decision by the Administrative Law Judge,
12 a reasonable attorney fee shall be allowed.

13 (b) For purposes of this section, a "denied claim" is:

14 (A) A claim for compensation which an insurer or self-insured employer refuses to pay on the
15 express ground that the injury or condition for which compensation is claimed is not compensable
16 or otherwise does not give rise to an entitlement to any compensation;

17 (B) A claim for compensation for a condition omitted from a notice of acceptance, made pursuant
18 to ORS 656.262 (6)(d), which the insurer or self-insured employer does not respond to within 60 days;
19 or

20 (C) A claim for an aggravation made pursuant to ORS 656.273 (2) or for a new medical condition
21 made pursuant to ORS 656.267, which the insurer or self-insured employer does not respond to
22 within 60 days.

23 (c) A denied claim shall not be presumed or implied from an insurer's or self-insured employer's
24 failure to pay compensation for a previously accepted injury or condition in timely fashion. Attor-
25 ney fees provided for in this subsection shall be paid by the insurer or self-insured employer.

26 **(2)(a) If a claimant finally prevails against a denial as provided in subsection (1) of this**
27 **section, the court, board or Administrative Law Judge may order payment of the claimant's**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 reasonable expenses and costs for records, expert opinions and witness fees.

2 (b) The court, board or Administrative Law Judge shall determine the reasonableness of
3 witness fees, expenses and costs for the purpose of paragraph (a) of this subsection.

4 (c) Payments for witness fees, expenses and costs ordered under this subsection shall be
5 made by the insurer or self-insured employer and are in addition to compensation payable
6 to the claimant.

7 (d) Payments for witness fees, expenses and costs ordered under this subsection may not
8 exceed \$1,500 unless the claimant demonstrates extraordinary circumstances justifying pay-
9 ment of a greater amount.

10 [(2)] (3) In all other cases, attorney fees shall be paid from the increase in the claimant's com-
11 pensation, if any, except as otherwise expressly provided in this chapter.

12 **SECTION 2.** The amendments to ORS 656.386 by section 1 of this 2007 Act apply to
13 workers' compensation claims in which the order on the compensability of the claim denial
14 has not become final on or before the effective date of this 2007 Act.

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