



## **Workers' Compensation Overview / HB 2764**

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**Oregon Workers' Compensation Division**  
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### **What is workers' compensation?**

- Social insurance
- Protects employers and employees from financial loss and hardship due to injuries
- "Great compromise"
  - Employees guaranteed medical and wage benefits
  - Employers protected from lawsuits

## Oregon History

- Before 1913, the only recourse for workers was to sue their employer for workplace injuries
- The legislature created the workers' compensation system, effective 1914
- Employers purchased insurance through a state fund

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## Policy Findings

- The legislature stated findings for the system:
  - Injuries will occur at work
  - Work is a valuable enterprise
  - Lawsuits are costly and have low benefit for both parties
  - Exclusive statutory system of compensation provides best solution

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## Oregon's System

- Coverage
- No fault
- Exclusive remedy
- Comprehensive medical treatment
- Payment for wage loss and disability
- Workplace safety
- Efficient dispute resolution

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## Oregon History

- In 1966, the legislature made most employers subject to workers' compensation law.
- Employers had three choices:
  - Buy insurance from State Compensation Department (the predecessor of SAIF Corp.)
  - Buy insurance from private insurers, or
  - Self insure

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## Oregon History

- Between 1987 and 2001 there were a number of reform efforts.
- Some of the results:
  - Emphasized return to work
  - Improvements to safety and enforcement
  - Managed care and improved medical care
  - More precise definition of compensable injury
  - Streamlined litigation and dispute processes

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## Oregon System Today

- Affordable system for employers
- Strong benefits for workers
- Employers pay premiums that fund benefits
- Employers and workers equally pay for return to work, cost of living increases, and other programs

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## Oregon System Today

- Legislature has a key role in this process
  - Decides who must be covered and who provides coverage
  - Sets levels of benefits
  - Decides who qualifies for benefits
  - Gives policy direction

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## Dept. of Consumer and Business Services (DCBS)

- Administers the law:
  - Ensure coverage is in place, resolve disputes, and ensure workers get benefits due (Workers' Compensation Division)
  - Insurance company financial regulation (Insurance Division)
  - Workplace safety (OR-OSHA)

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## **Workers' Compensation Board**

- Workers' Compensation Board resolves disputes and approves settlements
  - Hearings Division/ALJs
  - Board hears appeals and approves settlements

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## **Management-Labor Advisory Committee (MLAC)**

- Statutory committee made up of five management members, five labor members, Director of DCBS is ex-officio
- Charged to study issues that affect the system
- Reports findings and recommendations to legislature and governor

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## Ombudsman

- Ombudsman for Injured Workers
- Small Business Ombudsman

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## Insurers and Self-Insured Employers

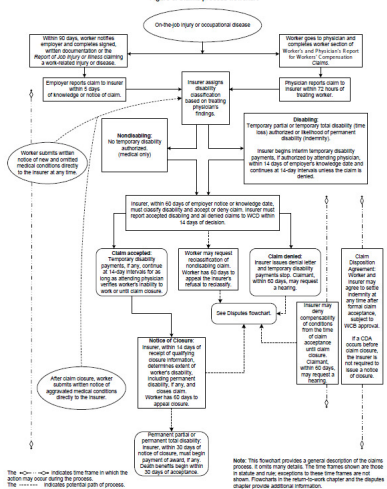
- Process claims
- Pay benefits
- Rate permanent disability
- Set aside reserves to pay future liabilities
- Assist with safety programs
- Implement return to work

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# Claim Processing

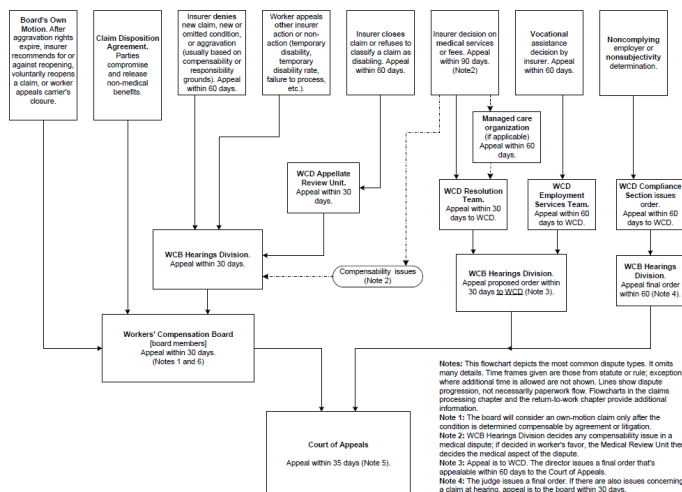
2014 REPORT ON THE OREGON WORKERS' COMPENSATION SYSTEM

Figure 6. Claims process flowchart



# Disputes

Figure 14. Disputes flowchart



Notes: This flowchart depicts the most common dispute types. It omits many details. Time frames given are those from statute or rule; exceptions where additional time is allowed are not shown. Lines show dispute progression, not necessarily paperwork flow. Flowcharts in the claims processing chapter and the return-to-work chapter provide additional information.

Note 1: The board will consider an own-motion claim only after the condition is determined compensable by agreement or litigation.

Note 2: WCB Hearings Division decides any compensability issue in a medical dispute; if decided in worker's favor, the Medical Review Unit then decides the medical aspect of the dispute.

Note 3: Appeal is to WCD. The director issues a final order that's appealable within 60 days to the Court of Appeals.

Note 4: The judge issues a final order. If there are also issues concerning a claim at hearing, appeal is to the board within 30 days.

Note 5: Court of Appeals decisions may be reviewed by the Oregon Supreme Court, but the high court's review is discretionary.

Note 6: Alternatively, the mediating administrative law judge may approve a CDA. Only CDA disapprovals are appealable to the courts.



## Claimant Attorney Fees

- Attorneys cannot charge a worker for their services
- Attorney fees only paid when they prevail

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## Claimant Attorney Fee Examples

- Reversing a denial
- Obtaining an increase in compensation
- Proving an unreasonable delay or refusal to pay benefits
- Preventing a decrease in compensation
- Negotiating settlements

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## Out-of-Compensation Fees

- Paid out of worker's award or settlement
- Most are based on percentage formula
- Typically for settlements or disability benefits increase

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## Assessed Fees

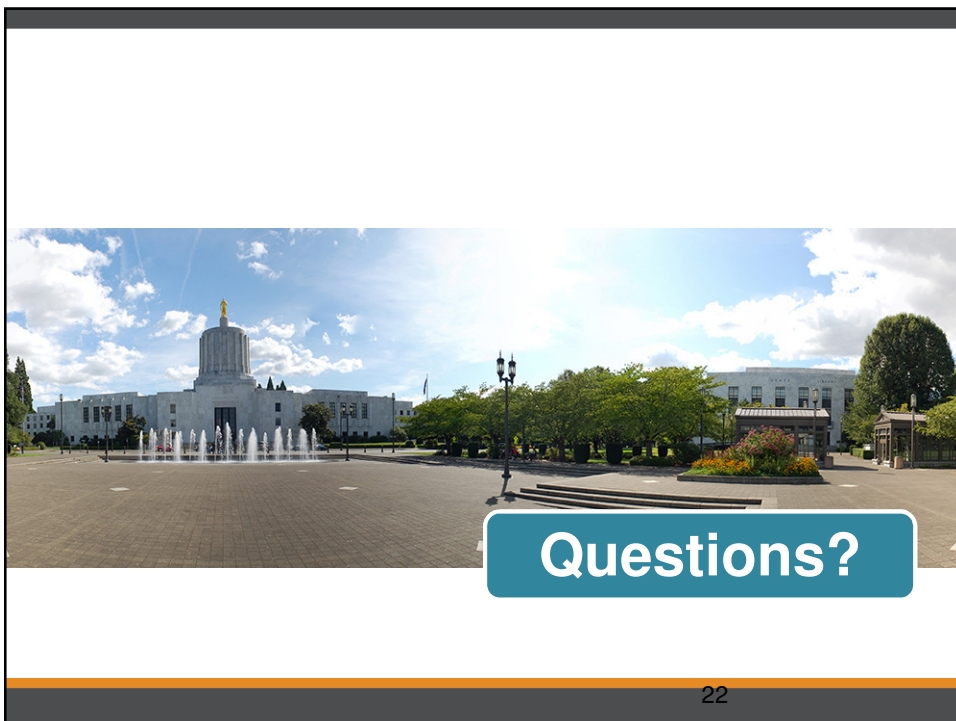
- Paid by insurer in addition to compensation
- Does not reduce benefits to worker
- Based on adjudicator's judgment of reasonable fee

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## Attorney Fee History

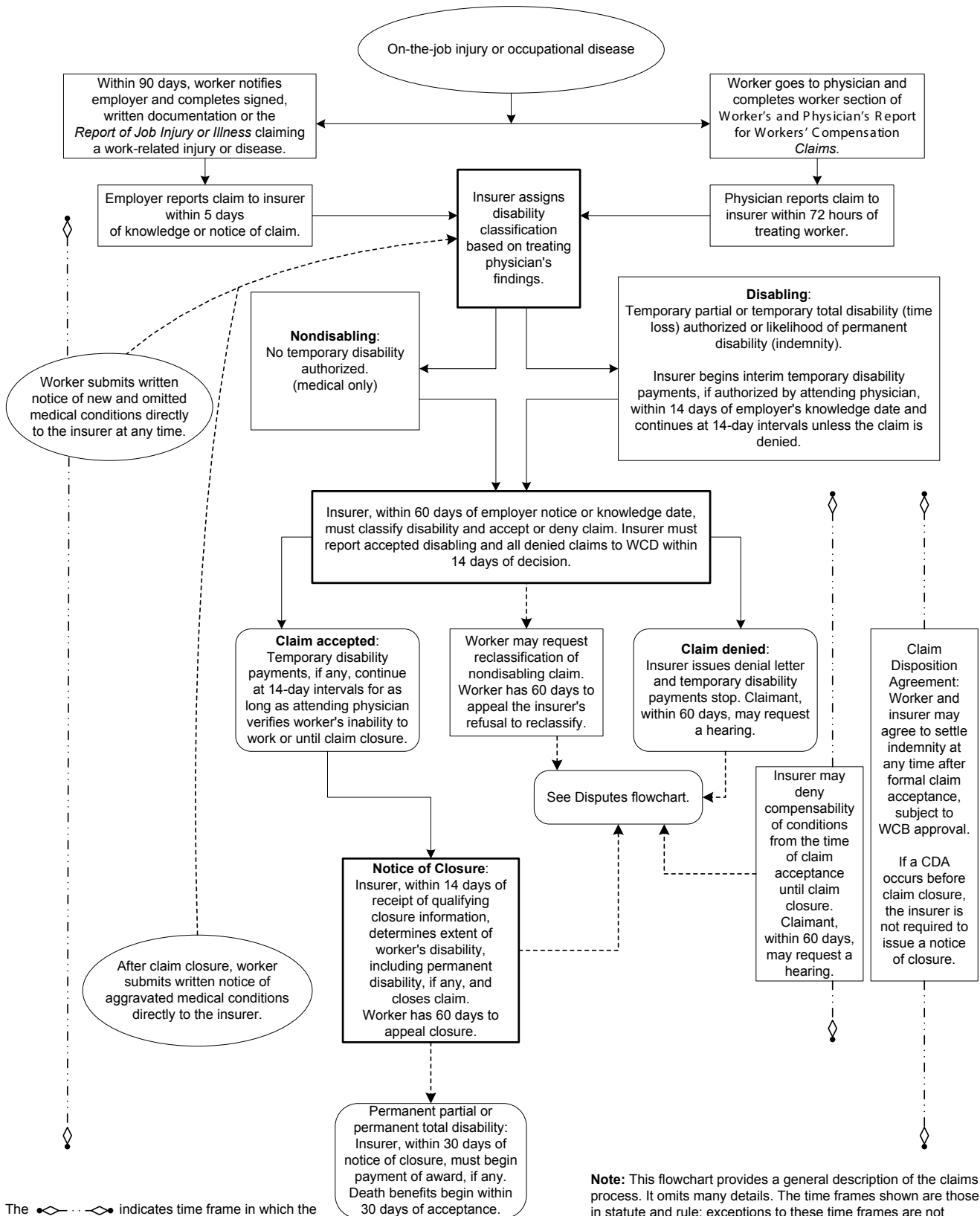
- 1999: Last administrative rule change for out-of-compensation fees by Workers' Compensation Board
- 2003: Fee when the insurer unreasonably delays or refuses to pay a claim and fees for medical and vocational disputes
- 2007: Litigation costs paid for denied claims
- 2009: Fees available in new circumstances; fee caps indexed to inflation

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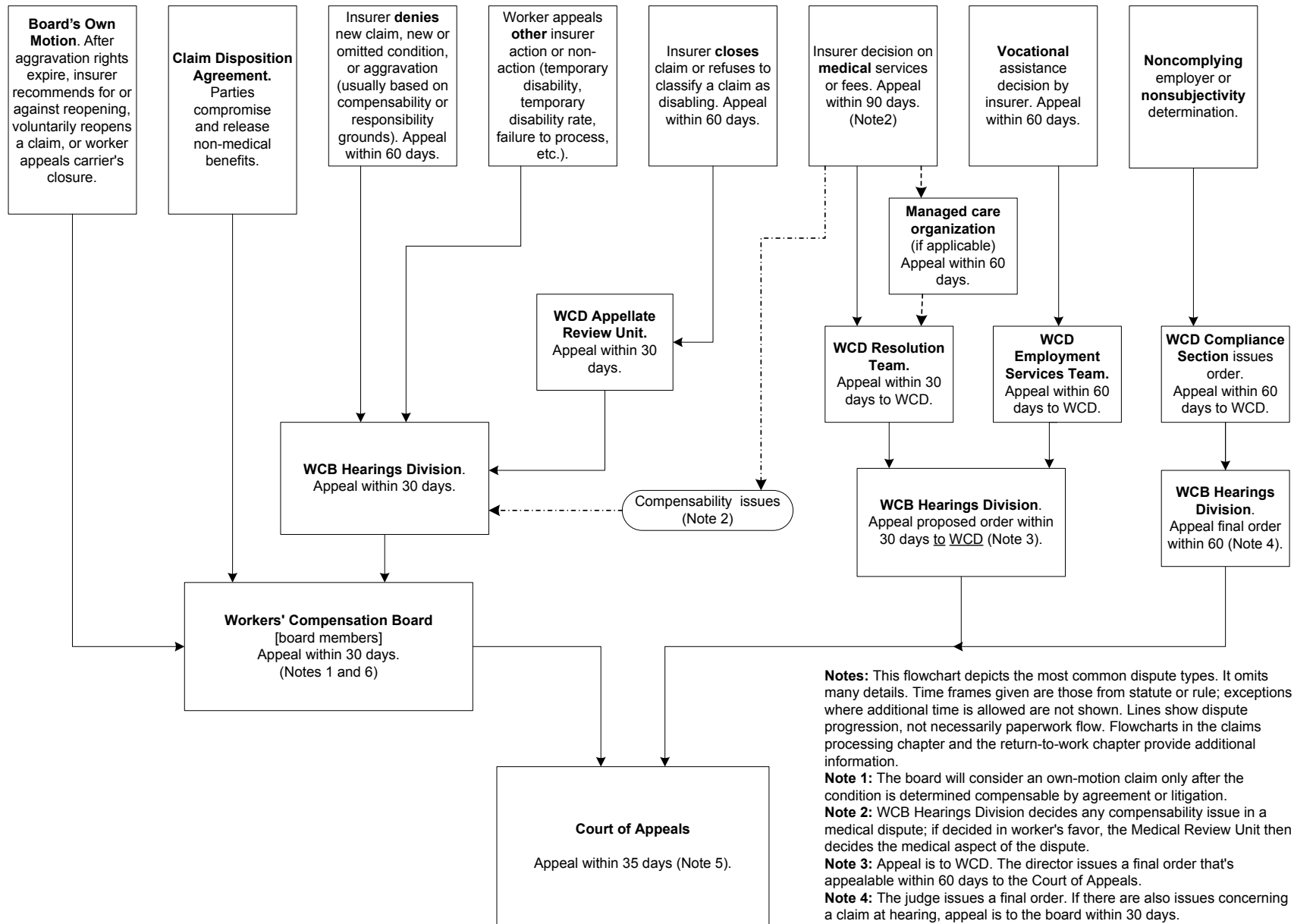
Figure 6. Claims process flowchart



The indicates time frame in which the action may occur during the process.  
 The indicates potential path of process.

**Note:** This flowchart provides a general description of the claims process. It omits many details. The time frames shown are those in statute and rule; exceptions to these time frames are not shown. Flowcharts in the return-to-work chapter and the disputes chapter provide additional information.

Figure 14. Disputes flowchart



The ----- and - - - - - lines indicate potential path of process.

**Notes:** This flowchart depicts the most common dispute types. It omits many details. Time frames given are those from statute or rule; exceptions where additional time is allowed are not shown. Lines show dispute progression, not necessarily paperwork flow. Flowcharts in the claims processing chapter and the return-to-work chapter provide additional information.

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