

## Dispute Adjudication: Workers' Compensation Claims and Oregon OSHA Complaints

### *Workers' compensation claims*

Under the workers' compensation system, a worker who is injured through their job generally cannot sue their employer in a civil action for damages caused by job-related injuries or diseases if the employer provided workers' compensation insurance. In exchange, the worker receives medical care, compensation for time missed from work, and other injury-related benefits, such as permanent disability and vocational assistance. Who is at fault in causing the injury is not a factor. This is commonly referred to as exclusive remedy.

Oregon's Workers' Compensation Law is the exclusive remedy for workers and their beneficiaries, and the exclusive liability for employers who provide coverage, for work-related injuries and diseases. See ORS 656.012, 656.018. There are some limited exceptions. All workers are subject to ORS chapter 656, except those specifically excluded as nonsubject workers (See ORS 656.027, 656.005(30), 656.025, 656.031, and 656.037).

The workers' compensation system also provides a process for resolving disputes that arise out of injury and occupational disease claims. Disputes are not brought to court. They are heard by an administrative law judge from the Workers' Compensation Board (WCB); or by the Director of the Department of Consumer and Business Services (DCBS), through the Workers' Compensation Division, depending on the nature of the dispute. The board has authority to review disputes about whether a worker's claim is compensable<sup>1</sup> and how much compensation a worker is entitled to receive. Disputes regarding medical billing and fees, medical treatments, vocational assistance, and reconsideration of claim closure are reviewed by DCBS.

Decisions of the administrative law judge and the DCBS director can be reviewed by the WCB; both types of disputes are appealable to the Oregon Court of Appeals.

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<sup>1</sup> Caused by an accident arising from the employment and in the course of work.

## *Workplace safety citations and violations*

Workplace safety in Oregon is managed through a federal OSHA approved and monitored State Plan. The State Plan must be at least as effective as federal OSHA in protecting workers and in preventing work-related injuries, illnesses, and deaths.

The Oregon Safe Employment Act ensures safe and healthful working conditions for all working Oregonians and authorizes Oregon OSHA to enforce the state's workplace safety and health rules, including inspection of workplaces for safety or health hazards. ORS chapter 654 covers both private sector and state and local government employers. There are a number of business formations that are exempt. Examples include independent contractors, sole proprietors, and partnerships that have no workers' compensation insurance coverage and no employees; corporations that have an owner as the sole employee and have no workers' compensation insurance coverage; and corporate family farms that employ only family members.

Oregon OSHA opens inspections in response to workplace fatalities, accidents, imminent dangers, and complaints of unsafe working conditions; and referrals from other governments and internal safety and health professionals, and from credible media reports. Enforcement staff members also conduct planned inspections. Depending on the type of work the employer is engaged in, this set of inspections are based on an employer's history of workplace injuries and illnesses, previous Oregon OSHA inspections, number of employees, and an overall hazard rating of the employer's industry.

If Oregon OSHA concludes from an inspection that a rule or order was violated, a citation will be issued to the employer. An employer has 30 days to appeal any item on the citation, the penalty amount, the time given to abate the violation, or the entire citation. Most appeals are resolved during the informal conference process with an Oregon OSHA appeals specialist. During such conferences, the appeals specialist, the compliance officer, and the employer will discuss the issues in question and consider additional employer information. The appeals specialist has the authority to resolve the appealed citation. An employer who is not satisfied with the informal conference outcome may further pursue their appeal before a Workers' Compensation Board administrative law judge. That decision can be appealed to the Oregon Court of Appeals.

At an employer's or employee's request, Oregon OSHA provides the opportunity to informally discuss an appealed citation or any other matter regarding occupational safety and health in the workplace. An employer's request for an informal conference alone is not considered as an appeal.