

Let the Judge Decide

How Oregon courts
continue to shape an
evolving workers'
compensation system

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“There is little that is ‘plain’ about this state's workers' compensation [laws]”

Brown v. SAIF, 361 Or 241 (2017) (Landau, J.)

What we will cover:



Legal landscape

- Statutes
- Administrative Rules
- Case law



Historical shifts

- Reforms in the 1990s
- Changes in the 2000s
- Current state of the legislature and court



Key recent decisions

- Oregon Supreme Court
- Oregon Court of Appeals
- Workers' Compensation Board

Legal landscape



Statutes

- Definition (*Webster's Third New International Dictionary*):
 - 1b: The written will of a legislature expressed with all the requisite forms of legislation as distinguished from the common or unwritten law.

- Workers' Compensation Statutes:
 - Vetted by Management Labor Advisory Committee (MLAC)
 - New statutory changes every single session.
 - Chapter 656 of the Oregon Revised Statutes

Administrative Rules

- What?
 - Regulations adopted to give effect to a statute.
- Who?
 - Administrative agencies.

- Workers' Compensation administrative rules:
 - Promulgated by Workers' Compensation Division (WCD) and Workers' Compensation Board (WCB).
 - Adoption goes through Notice and Comment rulemaking.
 - OAR 436 and OAR 438

Case law

- What?

- Precedential written opinions interpreting the written law and duties of the parties.

- Who?

- Predominately courts, but also quasi-judicial administrative bodies.

- In Workers' Compensation:

- Workers' Compensation Board.
- Oregon Court of Appeals
- Oregon Supreme Court
- United States Supreme Court

Historical landscape



Oregon Workers' Compensation pre-1990

- Third highest medical costs
- Sixth highest premiums
- Highest occupational injury and illness incidence rates
- Extremely litigious
- Deepening concerns that insurers would need to drop coverage for up to 10,000 businesses

Mahonia Hall reforms: The pendulum shifts

- Expanded requirements for safety committees
- Department disability standards used for claim closure
- Specific requirements to be an attending physician
- Established use of Managed Care Organizations (MCO)
- Established Management Labor Advisory Committee (MLAC)
- Heightened compensability standards (occupational disease/combined conditions)

2000s: Pendulum begins to swing back

Concerted effort to fix perceived imbalances to the workers' compensation system.

- Overhaul of permanent partial disability rating system
- WRME Provision
- More pressure on insurer processing timelines
- More oversight of insurer medical examinations
- Expanded provider types and roles in oversight of claims.

2010s to today: Momentum for labor

Expanding benefits and access

- Restrictions on employment releases in WC settlements
- Expansion of attorney fees
- Limits on recouping overpayments
- Presumption of compensability expanded to new professions
- Expand provider types and roles in oversight of claims.

Recent decisions





Course and Scope

Two-pronged test

“In the course of”

- Looks at time and place
- Where employer could reasonably anticipate worker would be
- At a time employer could reasonably anticipate worker would be there

“Arising out of”

- Injury arose from a risk to which work exposed the worker
- Activity benefitted employer, or worker believed it would

Quintus L. Hall, Sr., 77 Van Natta 418 (2025)

- Primary issue:

- Application of the “going and coming” rule.

- Approximate holding:

- “Going and coming” rule does not apply if the claimant has not started their shift, was not receiving wages for their time, and the activity engaged in was not part of the job description or a collective bargaining agreement.

- Why it matters:

- Provides legal support that injuries incidental to employment that occur prior to a shift are outside the course and scope of employment under the “coming and going” rule.



Penalties and reasonableness

Penalties

- What?

- Monetary penalty paid to the worker for unreasonable employer/insurer action

- When?

- Employer/insurer does not have “legitimate doubt” about an action

- How assessed?

- What information was available to the employer when a specific decision was made

SAIF v. Krusenstjerna, 346 Or App 429 (2026)

- Primary issue:

- When is a premature closure unreasonable?

- Approximate holding:

- A factual determination that it was “unclear” whether claimant was medically stationary at the time of closure does not make the closure *per se* unreasonable.

- Why it matters:

- If medically stationary status at closure is capable of more than one reasonable interpretation, and SAIF chooses one of the reasonable interpretations, then the closure should not be deemed unreasonable.



Injury vs. Occupational Disease

Injuries vs. Occupational Disease

“Injuries”

- Traumatic on-the-job event with sudden onset of symptoms
- Low standard for compensability: Material cause

“Occupational Diseases”

- Condition develops gradually over an extended period
- High standard for compensability: Major cause

Robey v. Weir Esco, 346 Or App 208 (2025)

- Primary issue:
 - Is the board/court bound by preliminary determinations of a specific theory of compensability?
- Approximate holding:
 - The parties cannot bind the board/court to a specific legal theory of compensability.
- Why it matters:
 - Deflates the argument that either the claimant or employer can bind the board/court to a specific legal theory based on how a claim is initially characterized.

Fred Meyer Stores v. Anderson, 344 Or App 60 (2025)

- Primary issue:

- How are symptoms that predate a discrete injury event considered in determining whether an occupational disease theory applies?

- Approximate holding:

- The overall knee condition arose during a discrete period of time.

- Why it matters:

- Complicates whether an injury or occupational disease theory applies when symptoms arise prior to a discrete strain type event.

Catherine Booth, 77 Van Natta 21 (2025)

- Primary issue:
 - Which legal theory applies to a requested standalone arthritic condition?
- Approximate holding:
 - If the condition at issue preexisted the injury and developed gradually over time it should be analyzed as an occupational disease if no combined condition exists.
- Why it matters:
 - Establishes a pathway to argue some preexisting conditions should be analyzed under an occupational disease theory.



Preexisting conditions

ORS 656.225

Compensability of certain preexisting conditions

In accepted injury or occupational disease claims, disability solely caused by or medical services solely directed to a worker's preexisting condition are not compensable unless:

- (1) In occupational disease or injury claims other than those involving a preexisting mental disorder, work conditions or events constitute the **major contributing cause of a pathological worsening** of the preexisting condition.

Barnes v. Cache Valley Electric, 339 Or App 371 (2025)

- Primary issue:

- Does ORS 656.225 apply to compensability of preexisting conditions?

- Approximate holding:

- ORS 656.225 applies to compensability of certain preexisting conditions. Requires claimant to prove the work injury was the major cause of a pathological worsening of the preexisting condition.

- Why it matters:

- Heightened standard for compensability of standalone preexisting conditions in the new/omitted condition context.



Attorney fees

Attorney fee types

- Assessed fees
- Penalty related fees
- Settlements
 - Claims Disposition Agreement (CDA)
 - Disputed Claims Settlement (DCS)
- Stipulations
- Out-of-compensation fees

Fees over time

Hearing fees

2020: \$9,150
2021: \$11,307 (+23.5%)
2022: \$10,463 (-7.5%)
2023: \$11,224 (+7.5%)
2024: \$12,290 (+9.5%)
2025: \$11,779 (-4%)

+30% increase over 5 years

Hourly rates

Requested vs. Awarded hourly rates:

- \$1,200/hr → \$500/hr (*Peabody*)
- \$1,000/hr → \$463/hr (*Souza*)
- \$1,000/hr → \$344/hr (*Rudas*)
- \$1,050/hr → \$205/hr (*Gay*)
- \$800/hr → \$455/hr (*Sadler*)
- \$1,000/hr → \$500 (*Shannon*)

Changes to fees

Changes

- New entitlement to fees for time spent successfully litigating the amount of an attorney fee award (*Peabody/Taylor* decisions)
 - Increased litigation over fee award amounts.
- Out-of-compensation fee cap for settlements increases to 25%.
- General increase in assessed fee awards.



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