

# Workers Compensation Claim

## State Environmental Guide - Oregon

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### Indemnity issues

<p>Temporary Total Benefits</p>	<p>STATE'S AVERAGE WEEKLY WAGE (SAWW) (ORS 656.005(1) and 656.211)            The SAWW affects the computation of most workers' compensation benefits for all injuries occurring on or after July 1, 1973, including temporary total disability, permanent partial disability, permanent total disability, and death benefits.</p> <p>This year, the SAWW has increased by 6.263 percent, from \$1,247.13 to \$1,325.24. Effective July 1, 2022 through June 30, 2023, the 2022 SAWW used to compute workers' compensation benefits is \$1,325.24.</p> <p>TEMPORARY TOTAL DISABILITY BENEFITS (TTD) (ORS 656.210, 656.211)</p> <p>For workers injured before July 1, 2022, who are entitled to benefits on or after July 1, 2022, adjust benefits using the adjustment factors shown on the "Average Weekly Wage" chart, applicable to the date of injury, subject to the current maximum statutory rate based on the date of injury. Current maximum statutory rates for claims with dates of injuries between:</p> <ol style="list-style-type: none"> <li>1. 7/1/2017 – 6/30/2023 \$1,762.57</li> <li>2. 7/1/2012 – 6/30/2017 \$1,783.06</li> <li>3. 1/1/2002 – 6/30/2012 \$1,785.72</li> <li>4. 7/1/1975 – 12/31/2001 \$1,342.65</li> <li>5. 4/1/1974 – 6/30/1975 \$1,074.12</li> </ol> <p>Workers injured on or after Jan. 1, 2002, who were employed in more than one job at the time of injury and who lose wages from one or more of the additional jobs, may be eligible for supplemental disability payments under ORS 656.210(2), but not more than the current maximum statutory rate based on the date of injury. TTD rates are reviewed by the state every year and <b>Bulletin #111</b> publishes the yearly rate change.</p> <p>Oregon has a three-day waiting period. The waiting period is 3 consecutive calendar days, beginning with the first day the worker leaves work or loses wages as a result of the compensable injury. The waiting period is paid retroactively if total (vs. TP) disability continues to be medically approved for 14 consecutive days after the first date of total disability. The worker is entitled for payment of the waiting period if hospitalized as an inpatient within the first 14 days of disability. There is no limitation on the duration of TT benefits.</p>
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<p>Temporary Partial Benefits</p>	<p>TP benefits are limited by the same maximum weekly TT rate given above. There is no minimum rate applied to TP benefits. The worker is not eligible to recover disability benefits from the waiting period if they have been released to modified work within the first 14 days following the date approved WC disability began.</p>
<p>Permanent Partial Benefits</p>	<p>An injured worker's eligibility for a permanent partial disability award is evaluated by the attending physician when a worker is deemed to be medically stationary. Beginning with dates of injury of 1/1/05, Oregon's permanent impairment award rate per percent of impairment is based off the state average weekly wage on the date of injury. Permanent partial awards in excess of \$6,000; are payable at 4.35 times the weekly temporary total disability rate in effect at the time of notice of closure issuance. . The injured employee may request a lump sum payment via completion of a Lump Sum Application. This waives the injured employee's right to appeal the amount of the permanent disability award.</p> <p>In addition to standard partial disability benefit based on physical impairment, an injured employee may be entitled to "work disability" if the worker is not released back to or returned to the job at injury. The "work disability" award is based on the injured employee's average weekly wage and impairment "modified by age, education and adaptability to perform a given job." Together, an IW's "impairment" + "work disability" = PPD (Permanent Partial Disability)</p>
<p>Permanent Total Benefits</p>	<p>Calculate the worker's PTD benefit by multiplying the worker's weekly wage by 66 and 2/3 percent. For injuries that occur before Jan. 1, 2018, the benefit must not exceed 100 percent of the SAWW in effect at the time of injury. For injuries that occur on or after Jan. 1, 2018, the benefit must not exceed 133 percent or be less than 33 percent of the SAWW in effect at the time of the injury. Multiply the total weekly benefit by 4.35 to arrive at the monthly benefit. PTD benefits are paid at the statutory rate until eligible to be modified by applicable Retroactive Program increases. Retroactive Program benefit levels are established by the Workers' Compensation Division and described in the Retroactive Program bulletin issued each September.</p>

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<p>Fatality Benefits</p>	<p>Fatality benefits payable as a result of injuries which occurred on or after 4/1/74 continue to be computed in relation to the State Average Weekly Wage in effect at the time of the injury.</p> <p>Fatality benefits payable to a surviving spouse, domestic partner, or children for injuries occurring on or after July 1, 2022 are computed in the following manner:</p> <ul style="list-style-type: none"> <li>• The monthly benefit for a surviving spouse or domestic partner is 4.35 times 66 and 2/3 percent of the SAWW, or \$3,843.39.</li> <li>• The monthly benefit to each child of a deceased worker who is under 19 years of age, or who is 19 to 26 years of age with a surviving parent and completing secondary education, obtaining a general educational development certificate (GED), or attending a program of higher education is 4.35 times 25 percent of the SAWW, or \$1,441.20..* Benefits under ORS 656.204(6)(a) are payable any month in which the child attends one of the above activities for at least one day and must not be paid for more than 48 months. See ORS 656.204(3)(a) and 656.204(6)(a).</li> <li>• The total monthly benefits paid to eligible children must not exceed 4.35 times 133 and 1/3 percent of the SAWW, or \$7,686.20.. Benefits paid to a surviving spouse, or children without a surviving parent under ORS 656.204(6)(b), do not count toward the limit. See ORS 656.204(3)(b).</li> <li>• The insurer or self-insured employer must send each child Form 5332, "Notice to Beneficiary of Entitlement to Benefits," at least 90 days before their 18th birthday, informing the child of their right to receive benefit payments directly under OAR 436-060-0075(4)(b), and of their entitlement to higher education benefits. • The monthly benefit to a child or dependent with no surviving parent, who is 19 to 26 years of age, and completing secondary education, obtaining a general educational development certificate (GED), or attending a program of higher education is 4.35 times 66 and 2/3 percent of the SAWW, or \$3,843.39. Benefits are payable any month in which the child attends one of the above activities for at least one day and must not be paid for more than 48 months. Eligibility for benefits ends when the child becomes 26 years of age.* See ORS 656.204(6)(b) and (c).</li> </ul> <p>*Please refer to ORS 656.204 to determine benefit levels applicable to situations other than those described above.</p>
<p>Vocational Rehabilitation</p>	<p>Vocational assistance in Oregon includes help with job placement and training. To qualify, the worker must have qualified for a permanent partial disability award, could not return to the regular job at injury or to a job that pays at least 80% of the wage the worker was earning at the time of injury, and the injured employee must be authorized to work within the United States. Vocational disability benefits are paid at the temporary total disability rate while the worker is in a vocational training program. A vocational rehabilitation evaluation is required when the worker is medically stationary if they are not released to or performing their job at injury.</p>

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Settlement Allowed	Indemnity benefits can be settled by a Claim Disposition Agreement (CDA) at any time. A worker may not use a CDA (or ANY kind of settlement) to settle his/her future rights to medical benefits on an <u>accepted</u> claim. Pre-existing condition(s) can be used in settlement to challenge future rights to medical benefits under a major cause standard. Settlements must be approved by an Oregon Administrative Law Judge.
Cap on benefits, exceptions	<p>Payments to aliens residing outside of United States.</p> <p>(1) If a beneficiary is an alien residing outside of the United States or its dependencies, payment of the sums due such beneficiary may, in the discretion of the Director of the Department of Consumer and Business Services, be made to the consul general of the country in which such beneficiary resides on behalf of the beneficiary. The receipt of the consul general to the director for the amounts thus paid shall be a full and sufficient receipt for the payment of the funds thus due the beneficiary.</p> <p>(2) If a beneficiary is an alien residing outside of the United States or its dependencies, the director may, in lieu of awarding such beneficiary compensation in the amount provided by this chapter, award such beneficiary such lesser sum by way of compensation which, according to the conditions and costs of living in the place of residence of such beneficiary will, in the opinion of the director, maintain the beneficiary in a like degree of comfort as a beneficiary of the same class residing in this state and receiving the full compensation authorized by this chapter.</p> <p>The director shall determine the amount of compensation benefits upon the basis of the rate of exchange between the United States and any foreign country as determined by the Federal Reserve Bank as of January 1 and July 1 of the year when paid.</p>

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Initial Choice of Provider	The worker chooses the attending physician within the State of Oregon. An employer or insurer do not have the right to direct care in Oregon.
Change of Provider	The employee can make 2 changes of attending physician over the life of a claim without approval from the Director. An initial emergency room provider does not count as a change in provider.
Medical Fee Schedule	Oregon implemented a medical fee schedule in 1982. The Workers Compensation Division adopts, by reference, parts of the Centers for Medicare & Medicaid Services Medicare Resource Based Relative Value Scale, the American Society of Anesthesiologists Relative Value Guide, and Current Procedural Terminology. Prescription drugs are reimbursed at the lesser of "usual and customary charge" or 95% of the average wholesale price plus a dispensing fee.
Managed Care	<p>Any health care provider or group of medical service providers may make written application to the Director of the Department of Consumer and Business Services to become certified to provide managed care to injured workers. However, nothing in this section authorizes an organization that is formed, owned or operated by an insurer or employer other than a health care provider to become certified to provide managed care. The application for certification shall include, but not be limited to:</p> <p>(a) A list of the names of all individuals who will provide services under the managed care plan, together with appropriate evidence of compliance with any</p>

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	<p>licensing or certification requirements for that individual to practice in this state.</p> <p>(b) A description of the times, places and manner of providing services under the plan.</p> <p>(c) A description of the times, places and manner of providing other related optional services the applicants wish to provide.</p> <p>(d) Satisfactory evidence of ability to comply with any financial requirements to insure delivery of service in accordance with the plan that the director may prescribe.</p> <p>Approved plan must provide adequate methods of peer review, service utilization review, quality assurance, contract review and dispute resolution to ensure appropriate treatment or to prevent inappropriate or excessive treatment, to exclude from participation in the plan those individuals who violate these treatment standards and to provide for the resolution of such medical disputes as the director considers appropriate.</p>
Utilization Review	Certified managed care plans must have utilization review programs that include prospective, concurrent, and retrospective review.
Treatment Guidelines	Each managed care plan to develop its own treatment guidelines. Unless otherwise provided for by statute, or within utilization and treatment standards under an MCO contract, treatment typically does not exceed 15 office visits by any and all attending physicians or authorized nurse practitioners in the first 60 days from first date of treatment, and two visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, rather is a guideline for reviewing treatment.
Generic Drug Substitution	The state mandates generic substitution.
Medical Mileage Reimbursement Rate	62.5 cents per mile, effective 07/01/2022 per Bulletin 112. An injured worker has up to 2 years from the date of service to request mileage reimbursement.
Network Information	Per legislation, PPOs/Network is no longer allowed.
Ability to Terminate Medical Treatment	Once a worker is medically stationary, the compensable WC claim may still have exposure for future medical treatment for the costs of medical services such as prescription drugs, diagnostic care, life-preserving care, and future curative care. Palliative care is covered if pre-approved by the insurer or WCD and allows the injured worker to continue to work, keep the accepted condition(s) in a medically stable status, or to participate in a vocational training program.
Settlement Allowed	Medical benefits cannot be settled. However, major cause denials/ceases denials can be used in settlements to effectively sever the right to medical treatment for the accepted conditions via a Disputed Claim Settlement. Non-medical rights on an accepted claim (i.e., time-loss, vocational benefits, permanent impairment). can be settled via a Claim Disposition Agreement. Settlements must be approved by an Oregon Administrative Law Judge.
Cap on benefits, exceptions	None

**Other Issues**

WC Hearing Docket Speed	Hearings are scheduled for 90 days out from the request.
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**Other Issues**

<p>Staff Counsel</p>	<p>Staff counsel is available in Oregon for Oregon workers compensation:                  Melissa Douglas Sr. Counsel, Claim Legal The Law Offices of Goehler and Associates                  4000 Kruse Way Place, Suite 1-135                  Lake Oswego, OR 97035                  (503) 534-4405 direct                  (503) 534-4409 fax                  (800) 898-6883, x. 4405 toll free                  MDDOUGLA@travelers.com</p> <p>Panel Counsel                  MacColl, Busch, Sato PC                  10260 SW Greenburg Road., Suite 600                  Portland, OR 97223                  Phone: 503-597-6200                  Fax: 503-597-6299</p>
<p>Hearings require attorney or claim handler participation</p>	<p>All hearings require attorney participation.</p>
<p>Occupational Diseases</p>	<p>ORS 656.802 defines what is covered under Oregon law:</p> <p>656.802 Occupational disease; mental disorder; proof. (1)(a) As used in this chapter, "occupational disease" means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:</p> <p>(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation, or other substances.</p> <p>(B) Any mental disorder whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.</p> <p>(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.</p> <p>(1) As used in this chapter, "mental disorder" includes any physical disorder caused or worsened by mental stress.</p> <p>(2)(a) The worker must prove that employment conditions were the major contributing cause of the disease.</p> <p>(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.</p> <p>(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (7).</p> <p>(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.</p> <p>(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.</p> <p>(3) Notwithstanding any other provision of this chapter, a mental disorder is not</p>

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	<p>compensable under this chapter unless the worker establishes all of the following:</p> <p>(a) The employment conditions producing the mental disorder exist in a real and objective sense.</p> <p>(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.</p> <p>(c) There is a diagnosis of a mental or emotional disorder that is generally recognized in the medical or psychological community.</p> <p>(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.</p> <p>(4) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an "occupational disease." Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter's employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter's employment. [Amended by 1959 c.351 §1; 1961 c.583 §1; 1973 c.543 §1; 1977 c.734 §1; 1983 c.236 §1; 1987 c.713 §4; 1990 c.2 §43; 1995 c.332 §56]</p>
Second Injury Fund availability	Any new compensable injury sustained by an injured worker within 3 years from the hire date as a state defined "Preferred Worker" has a claim eligible for Second Injury Fund recovery from the Workers Benefit Fund.
Other Offset Opportunities	The employer providing the last injurious exposure is fully responsible for an occupational disease WC claim in Oregon.
EDI	Medical EDI Release 2 (10/1/2014)
In-State Adjusting Required	Yes
License or Certification Required	Yes, An Oregon Workers Compensation Adjuster Certification is required for each adjuster managing an Oregon claim.

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