



Insurers could potentially see monthly bills—even absent a litigated dispute—from claimants’ attorneys, as part of House Bill 2764

By Kelly Niemeyer and Dave Wilson • April 29, 2015

The Oregon State Legislature is currently considering whether to provide claimant’s attorneys new ways to increase their fees and obtain fees in entirely new situations. Without question, if House Bill 2764¹ takes effect and our reading of the bill proves accurate, you will see claimants’ counsel coming onto a claim more often during its preliminary stages and the costs of processing and litigating claims will skyrocket.

HB 2764, introduced January 15, 2015, proposes a “reasonable reading of the law” allowing the Board, Administrative Law Judges and Court to award additional benefits above and beyond what is already afforded the claimants’ bar. A brief overview of the various changes proposed by this rule is listed below. However, the true concern is buried on pages 6 and 7 of the bill where it reads:

(14)(b) If an injured worker is represented by an attorney, the insurer or self-insured employer shall pay the attorney a reasonable attorney fee based upon an hourly rate for the efforts in scheduling, providing or attending any investigation process required under this subsection. After consultation with the Board of Governors of the Oregon State Bar, the Workers’ Compensation Board shall adopt rules for the establishment, assessment and enforcement of an hourly attorney fee rate. [emphasis added]

The threat proposed by this bill is arguably its vague reference to the hourly fees available to claimants’ counsel for their efforts in “scheduling, providing or attending any investigation process.” HB 2764 does not offer a provision on how these fees are to be paid or when they are to be submitted. It does not prohibit monthly bills from a claimant’s counsel, even while a claim is not in active litigation. It does not discuss resolution of disputes relative to these potential fee submissions.

In theory, an insurer could see a bill on a monthly basis from a claimant’s attorney requesting payment while the claim is not in active litigation relative to opposing counsel’s efforts in notifying their client of scheduled

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¹ See <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2764>



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independent medical examinations and other scheduling/administrative activities undertaken by claimant's attorney's office. An insurer could even see an itemized bill reflecting doctor conferences with the attending physician or a specialist, the review of medical records or other "investigative" activities.

Given the vague wording of the bill, particularly savvy or motivated attorneys in the claimants' bar could potentially take advantage of this interpretation and advance a colorable argument in favor of monthly bills requiring reimbursement by the insurer for non-litigated claims. Testimony in February by the Oregon Trial Attorneys Association, a proponent of HB 2764, stated that the increased fees "would provide an incentive for additional lawyers to enter this specialized type of legal work."

The bill also provides increased and/or new attorney fees in several additional situations:

- Removing the \$3,000 limit on assessed attorney fees for unreasonable delay in the payment of compensation or unreasonable delay in accepting or denying a claim;
- An assessed (not out of the claimant's increased compensation but in addition to) attorney fee for unreasonable delay in the payment of a penalty, attorney fees or costs;
- An assessed fee for the claimant's attorney's instrumental role in reclassifying a claim from non-disabling to disabling before the director;
- The accrual of interest on attorney fees/costs that are stayed pending appeal and further litigation;
- A reasonable fee when a claimant prevails, in part, on a reconsideration dispute that was initiated by insurer/employer, even if the insurer/employer succeeded in reducing the overall compensation due to the claimant;
- A fee related to the unreasonable delay or resistance to payment of a penalty, attorney fee or costs, including requests by the employer for review at the Court of Appeals and Supreme Court when the employer does not fully prevail on all issues; and
- An assessed fee for the successful increase in a temporary total disability or temporary partial disability award.

The above recitation of increases and additions to the scope of attorney fees potentially accessible to the claimants' bar is very concerning.

If HB 2764 passes the House, it will move on to the Senate committees before being introduced to the Senate floor for vote. Without question, the legislature must hear from employers and insurers about the far-reaching effect of this bill and its potential to impact Oregon businesses.

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Bills of this nature prohibit growth in the state of Oregon. This does not help workers; it is submitted under the guise of providing equitable representation for both sides. In the long-run, only the claimants' bar is helped by this. The Associated Oregon Industries is one of many organizations opposing this bill, calling it a "job killer"; AOI's draft letter to legislators can be read at: http://www.aoi.org/clientuploads/2015_Legislature/HB_2764_Job_Killer_Floor_Ltr_4-23-15_Web.pdf.

If you have issues or concerns about HB 2764, it is imperative that you contact your representative; you can find your representative at: <https://www.oregonlegislature.gov/FindYourLegislator/leg-districts.html>. ■

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