



Oregon “Claimbatants”: the victims of on-the-job assaults

By Anna M. McFaul ■ April 19, 2019

When an assault at work (by a customer or even a stranger) results in a compensable workers’ compensation claim, the employer or insurer may wonder: do I have any workers’ compensation lien recovery options in the event a victim restitution award is granted as a result of the criminal action? The governing applicable statutes in Oregon indicate no.

A strict interpretation of the Oregon statutes indicates that a workers’ compensation lien may not attach to victim restitution funds from a criminal case. A criminal action cannot be brought by the worker but instead must be pursued by local state or federal prosecuting authorities.

Third party recovery statutes provide that a workers’ compensation lien can attach in an action brought by the worker to recover damages from a third party or person. ORS 656.154 allows a worker who is injured due to the negligence or wrongdoing of a third party or person to seek a remedy through the pursuit of a civil claim.

ORS 656.593 provides that if a worker elects to recover damages from a third person, the proceeds of any damages the worker receives from the third person are subject to a WC lien. The employer or insurer can also step into the shoes of the worker and pursue the third party cause of action if the worker elects not to bring the claim.

Victim restitution amounts are generally not high dollar figures, depending on the amount of damages proven and approved at sentencing. Victim restitution is also not always recoverable depending on the status or financial circumstances of the criminal defendant.

More importantly, an employer/insurer should weigh the “public goodwill factor” when considering whether to attach a workers’ compensation lien to a victim’s restitution award. As the governing applicable statutes appear ambiguous, the employer or insurer should consider erring on the side of caution in order to avoid fallout from unfavorable publicity.

Please do not hesitate to contact the attorneys at Reinisch Wilson Weier PC for assistance with any third party claim issue. ■



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