

Oregon - Formula and Consent

West's Oregon Revised Statutes Annotated

Title 51. Labor and Employment; Unlawful Discrimination

Chapter 656. Workers' Compensation (Refs & Annots)

Recovery Against Third Persons and Noncompensating Employers

O R S. § 656.593

Formerly cited as OR ST § 656.322

656.593. Procedure for actions; releases of liability and lien of paying agency

Currentness

(1) If the worker or the beneficiaries of the worker elect to recover damages from the employer or third person, notice of such election shall be given the paying agency by personal service or by registered or certified mail. The paying agency likewise shall be given notice of the name of the court in which such action is brought, and a return showing service of such notice on the paying agency shall be filed with the clerk of the court but shall not be a part of the record except to give notice to the defendant of the lien of the paying agency, as provided in this section. The proceeds of any damages recovered from an employer or third person by the worker or beneficiaries shall be subject to a lien of the paying agency for its share of the proceeds as set forth in this section. When the proceeds are paid in a series of payments, each payment shall be distributed proportionately to each recipient according to the formula provided in this section, unless otherwise agreed by the parties. The total proceeds shall be distributed as follows:

(a) Costs and attorney fees incurred shall be paid, such attorney fees in no event to exceed the advisory schedule of fees established by the Workers' Compensation Board for such actions.

(b) The worker or the beneficiaries of the worker shall receive at least 33-1/3 percent of the balance of such recovery.

(c) The paying agency shall be paid and retain the balance of the recovery, but only to the extent that it is compensated for its expenditures for compensation, first aid or other medical, surgical or hospital service, and for the present value of its reasonably to be expected future expenditures for compensation and other costs of the worker's claim under this chapter. Such other costs include expenditures of the Department of Consumer and Business Services from the Consumer and Business Services Fund, the Self-Insured Employer Adjustment Reserve and the Workers' Benefit Fund in reimbursement of the costs of the paying agency. Such other costs also include assessments for the Workers' Benefit Fund, and include any compensation which may become payable under ORS 656.273 or 656.278.

(d) The balance of the recovery shall be paid to the worker or the beneficiaries of the worker forthwith. Any conflict as to the amount of the balance which may be retained by the paying agency shall be resolved by the board.

(2) The amount retained by the worker or the beneficiaries of the worker shall be in addition to the compensation or other benefits to which such worker or beneficiaries are entitled under this chapter.

(3) A claimant may settle any third party case with the approval of the paying agency, in which event the paying agency is authorized to accept such a share of the proceeds as may be just and proper and the worker or the beneficiaries of the worker

shall receive the amount to which the worker would be entitled for a recovery under subsections (1) and (2) of this section. Any conflict as to what may be a just and proper distribution shall be resolved by the board.

(4) As used in this section, "paying agency" includes the Department of Consumer and Business Services with respect to its expenditures from the Workers' Benefit Fund in reimbursement of the costs of another paying agency for vocational assistance and the costs of claims of noncomplying employers.

(5) The department shall be repaid for its expenditures from the proceeds recovered by the paying agency in an amount proportional to the amount of the department's reimbursement of the paying agency's costs. All moneys received by the department under this section shall be deposited in the same fund from which the paying agency's costs originally had been reimbursed.

(6) Prior to and instead of the distribution of proceeds as described in subsection (1) of this section, when the worker or the beneficiaries of the worker are entitled to receive payment pursuant to a judgment or a settlement in the third party action in the amount of \$1 million or more, the worker or the beneficiaries of the worker may elect to release the paying agency from all further liability on the workers' compensation claim, thereby canceling the lien of the paying agency as to the present value of its reasonably expected future expenditures for workers' compensation and other costs of the worker's claim, if all of the following conditions are met as part of the claim release:

(a) The worker or the beneficiaries of the worker are represented by an attorney.

(b) The release of the claim is presented in writing and is filed with the Workers' Compensation Board, with a copy served on the paying agency, including the Department of Consumer and Business Services with respect to its expenditures from the Workers' Benefit Fund, the Consumer and Business Services Fund and the Self-Insured Employer Adjustment Reserve.

(c) The claim release specifies that the worker or the beneficiaries of the worker understand that the claim release means that no further benefits of any nature whatsoever shall be paid to the worker or the beneficiaries of the worker.

(d) The release of the claim is accompanied by a settlement stipulation with the paying agency, outlining terms of reimbursement to the paying agency, covering its incurred expenditures for compensation, first aid or other medical, surgical or hospital service and for expenditures from the Workers' Benefit Fund, the Consumer and Business Services Fund and the Self-Insured Employer Adjustment Reserve, to the date the release becomes final or the order of the board becomes final. If the payment of such incurred expenditures is in dispute, the release of the claim shall be accompanied by a written submission of the dispute by the worker or the beneficiaries of the worker to the board for resolution of the dispute by order of the board under procedures allowing for board resolution under ORS 656.587, in which case the release of the claim shall not be final until such time as the order of the board becomes final. In such a case, the only issue to be decided by the board is the amount of incurred expenses by the paying agent.

(e) If a service, item or benefit has been provided but a bill for that service, item or benefit has not been received by the paying agency before the release or order becomes final, the reimbursement payment shall cover the bill pursuant to the following process:

(A) The paying agency may maintain a contingency fund in an amount reasonably sufficient to cover reimbursement for the billing.

(B) If a dispute arises as to reimbursement for any bill first received by the paying agency not later than 180 days after the date the release or order became final, the dispute shall be resolved by order of the board.

(C) Any amount remaining in the contingency fund after the 180-day period shall be paid to the worker or the beneficiaries of the worker.

(D) Any billing for a service, item or benefit that is first received by the paying agency more than 180 days after the date the release or order became final is unenforceable by the person who issued the bill.

(f) The settlement or judgment proceeds are available for payment or actually have been paid out and are available in a trust fund or similar account, or are available through a legally enforceable structured settlement agreement if sufficient funds are available to make payment to the paying agency.

(g) The agreed-upon payment to the paying agency, or the payment to the paying agency ordered by the board, is made within 30 days of the filing of the withdrawal of the claim with the board or within 30 days after the board has entered a final order resolving any dispute with the paying agency.

(7) When a release of further liability on a claim, as provided in subsection (6) of this section, has been filed, and when payment to the paying agency has been made, the effect of the release is that the worker or beneficiaries of the worker shall have no further right to seek benefits pursuant to the original claim, or any independent workers' compensation claim regarding the same circumstances, and the claim shall not be reasserted, refiled or reestablished through any legal proceeding.

Credits

Formerly 656.322; Laws 1977, c. 804, § 16; Laws 1979, c. 839, § 12; Laws 1981, c. 540, § 1; Laws 1985, c. 600, § 12; Laws 1987, c. 373, § 35b; Laws 1993, c. 445, § 1; Laws 1995, c. 332, § 47; Laws 1995, c. 641, § 8; Laws 1997, c. 639, § 4.

Notes of Decisions (59)

O. R. S. § 656.593, OR ST § 656.593

Current with emergency legislation through Ch. 787 of the 2013 Reg. Sess. Revisions to Acts made by the Oregon Reviser were unavailable at the time of publication.