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Subject: art glass permanent rules published
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ADMINISTRATIVE RULES

438-015-0052
Attorney Fees in Connection with Claim Disposition Agreements

(1) When a claim disposition agreement is approved under the provisions of ORS 656.236 and OAR 438-009-0020, an attorney fee may be approved by the Board in an amount up to 25 percent of the first $50,000 of the agreement proceeds plus ten percent of any amount of the proceeds in excess of $50,000. Under extraordinary circumstances, a fee may be authorized in excess of this calculation.

(2) When the agreement proceeds are to be paid in more than one payment payable within a period of more than one year from the date of approval, for purposes of approving an attorney fee under section (1) of this rule, agreement proceeds shall be calculated based on the "present value" of the total proceeds. "Present value" may be represented by the actual present value of the total agreement proceeds or the purchase price of any annuity designed to fund payment of the total agreement proceeds. The parties shall provide the Board with a written statement of the "present value" of the total agreement proceeds.

Stat. Auth.: ORS 656.388(4), 656.726(5)
Stats. Implemented: ORS 656.236(4), 656.388
Hist.: WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 6-1991(Temp), f. 8-29-91, cert. ef. 9-2-91; WCB 8-1991, f. 11-6-91, cert. ef. 11-7-91; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

438-015-0055
Attorney Fees When a Claimant Requests Review by the Board

(1) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for temporary disability and the Board awards additional compensation, the Board shall award a reasonable assessed attorney fee.

(2) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation.

(3) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent total disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed $30,000.

(4) If a claimant requests review of an Administrative Law Judge's order that upheld a denial of compensability for a claim and the Board orders the claim accepted, the Board shall assess a reasonable attorney fee to be paid by the insurer or self-insured employer to the claimant's attorney.

(5) If a claimant requests review of an Administrative Law Judge's order that upheld a responsibility denial issued under ORS 656.308(2) and the claimant's attorney actively and meaningfully participates in finally prevailing against the responsibility denial, the Board shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee for prevailing over the responsibility denial shall not exceed $2,500. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.

(6) If a claimant requests review of an Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.308(2), 656.382, 656.383, 656.386, 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

438-015-0080
Attorney Fees in Own Motion Cases

(1) If an attorney is instrumental in obtaining increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, to be paid out of the increased compensation.

(2) If an attorney is instrumental in obtaining a voluntary reopening of an Own Motion claim that results in increased temporary disability compensation, the Board shall approve a fee of 25 percent of the increased compensation, to be paid out of the increased temporary disability compensation resulting from the voluntary reopening.

(3) If the Board awards additional compensation for permanent disability, the Board shall approve a reasonable attorney fee in the amounts prescribed in OAR 438-015-0040, payable out of the increased compensation.

(4) The Board may allow a fee in excess of the amounts prescribed in sections (1) through (3) of this rule upon a finding that extraordinary services have been rendered.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.267(3), 656.278(1), 656.386(1)(2), 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 2-1990, f. 1-24-90, cert. ef. 2-28-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 2-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 2-2003, f. 7-10-03, cert. ef. 9-1-03; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

438-015-0082
Timely Payment of Attorney Fees

(1) An approved attorney fee shall be paid within the time required for payment of the compensation out of which the approved fee is to be paid.

(2) An assessed attorney fee shall be paid within 14 days of the date the order authorizing the fee becomes final.

Stat. Auth.: ORS 656.307, 656.388, 656.593, ORS 656.726(5)
Stats. Implemented: ORS 656.382(1), 656.386(1)(2), 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2016, f. 10-13-16, cert. ef. 11-1-16

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Department of Environmental Quality
Chapter 340

Rule Caption: Art Glass Permanent Rulemaking
Adm. Order No.: DEQ 10-2016
Filed with Sec. of State: 10-3-2016
Certified to be Effective: 10-3-16
Notice Publication Date: 7-1-2016
Rules Adopted: 340-244-9000, 340-244-9010, 340-244-9015, 340-244-9020, 340-244-9030, 340-244-9040, 340-244-9050, 340-244-9060, 340-244-9070, 340-244-9080, 340-244-9090
Rules Amended: 340-244-0010
Rules Repealed: 340-244-0010(T), 340-244-9000(T), 340-244-9010(T), 340-244-9020(T), 340-244-9030(T), 340-244-9040(T), 340-244-9050(T), 340-244-9060(T), 340-244-9070(T), 340-244-9080(T), 340-244-9090(T)
Subject: The Oregon Environmental Quality Commission adopted permanent rules for colored art glass manufacturers. These rules were based on the temporary rules adopted by EQC in April 2016, with corrections in May 2016, with modifications based on new information and public comment.

Brief history

Elevated levels of hazardous air pollutants were found in the air around two glass manufacturing facilities in Portland. In May 2015, DEQ received the initial results of a study the U.S. Forest Service conducted looking at moss samples as an indicator or screening tool for contaminants in the air. The study's results showed that moss samples in the areas near two CAGMs contained high levels of cadmium and arsenic in Southeast Portland and cadmium in North Portland.

This pilot study prompted DEQ to set up air monitoring systems near the glass company in Southeast Portland. The results of DEQ air monitoring in October 2015 confirmed that the glass company was the likely source. DEQ completed its quality assurance and quality control review of those samples in late January 2016 and then shared its analysis of the findings with the Oregon Health Authority and the Multnomah County Health Department. DEQ also identified a second area of concern near the glass company in North Portland.

The glass companies were operating in compliance with the current law. One company was operating within its permit and the other company was not required to have a permit.

Based on sampling results DEQ concluded that uncontrolled furnaces used at the two facilities were more likely than not to emit potentially unsafe levels of hazardous air pollutants, and that current