

# Compensability

The Oregon workers' compensation system is a no-fault system. In other words, the compensability of a claim is not dependent upon demonstrating that either side in a dispute is negligent. One purpose of a no-fault system is to compensate injured workers for work-related claims. Limiting claims to those that arise out of and in the course of employment reduces workers' compensation costs.

## Definition of compensability

The definition of a compensable claim has been revised numerous times over the years. In 1987, HB 2271 restricted mental stress claims to those arising out of real and objective employment conditions not generally inherent in every working situation. There must be "clear and convincing evidence" that the mental disorder arose out of and in the course of employment. As a result, the number of accepted disabling stress claims dropped 56 percent between 1987 and 1989.

SB 1197 (1990) changed the definition of compensability for injuries and diseases; the language was revised by SB 369 (1995). A compensable injury or disease must be established by medical evidence supported by objective findings. The determination of a claim's compensability involves establishing the relative contributions of different causes of an injury or disease and deciding which cause is the primary one. Oregon is one of the few states in the country that has this major contributing cause standard. If an injury combines with a pre-existing condition, the consequential condition is compensable only if the qualifying injury is the major contributing cause of the disability or need for treatment; it remains compensable only for the period during which it remains the major contributing cause. For diseases, employment must be the major contributing cause, and the compensable disease must be caused by substances or activities to which an employee is not ordinarily exposed. These new compensability definitions were partly responsible for the decrease in the number of accepted claims in the early 1990s.

There are several factors that limit the compensability of a claim. Injuries from recreational and social activities primarily for the worker's personal pleasure are not compensable. Injuries arising from the use of alcohol or drugs are not compensable if it is proven that the drug or alcohol use was the major contributing cause. If the employer permitted, encouraged, or had knowledge of such consumption, then it may be compensable. SB 1197 also allowed insurers to deny an accepted claim during the two-year period following the date of original claim acceptance. Insurers may deny a claim at any time if acceptance was due to fraud, misrepresentation, or other illegal activity by the worker.

SB 1197 also required that claims for aggravation be established by medical evidence supported by objective findings that show that the worsened condition resulted from the original injury. In addition, when a worker sustains a compensable injury, the responsible employer remains responsible for future aggravations unless the worker sustains a new compensable injury involving the same condition.

## Major contributing cause study

The 1999 Legislature allocated funds to study the effects of the compensability language changes. The primary focus was the major contributing cause language in SB 1197 and SB 369. Legislators were interested in learning how these changes affected workers' compensation costs and worker benefits. Because the statute requires physicians to determine the extent to which a medical condition is due to the compensable injury, the Legislature also wanted to know if physicians could accurately make such decisions. A final goal of the study was to look at the major contributing cause language in combination with the exclusive remedy language for denied claims. In part, the Legislature commissioned the study because of a case before the Oregon Supreme Court, *Smothers v. Gresham Transfer, Inc.* In this case, it was asserted that the combination of the major contributing cause language

and the exclusive remedy language unconstitutionally denied injured workers with pre-existing medical conditions a legal remedy for their injuries.

The department contracted with the Workers' Compensation Center at Michigan State University to complete the study. The center enlisted the services of several of the country's leading workers' compensation researchers. It issued the report in October 2000. Copies are available from the department.

The researchers examined more than 1,500 denials in the claim files of five insurers and self-insured employers to determine how often major contributing cause language was used to deny claims. They concluded that many of the claims denied due to major contributing cause language would have been denied for other reasons prior to SB 1197. The researchers also conducted econometric analyses to estimate the size of the benefit changes caused by the legislation. They compared Oregon trends with national trends. One of the complicating factors was that workers' compensation costs declined throughout the nation during the 1990s. Therefore, the researchers sought to determine how much of the decline in Oregon's costs was due to legislative changes and how much would have occurred as a result of the national trends. They concluded that SB 1197 (the entire bill, not just the major contributing cause language) resulted in a reduction in benefits of at least 6.4 percent and that SB 369 resulted in a reduction of at least another 6.7 percent. This savings was due to a drop in the number of claims; the average cost per claim remained about the same.

The researchers also conducted a survey of physicians. Physicians reported that the major contributing cause standard was practical. Yet, they emphasized that it requires medical expertise to apply the standard accurately.

Finally, the researchers reviewed comparable statutes and legal decisions in other states. The review showed that the major contributing cause standard was used in three other states. The Oregon standard was the strictest standard for compensability

used by any state. Courts in other states have generally ruled that when workers' compensation benefits are denied to a certain group of claims, the claimants are not restricted by exclusive-remedy clauses. Therefore, these workers are allowed to file civil actions against their employers. This suggested that if the Oregon Supreme Court ruled in the same manner as other courts, it would find portions of Oregon's workers' compensation law unconstitutional; such a ruling was handed down the next year.

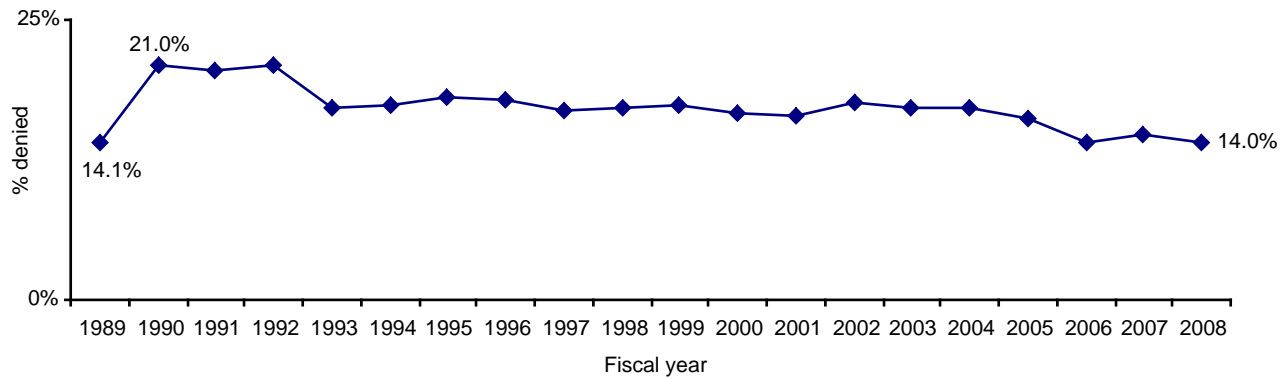
### **Smothers v. Gresham Transfer, Inc.**

In May 2001, during the legislative session, the Oregon Supreme Court issued its decision in the *Smothers v. Gresham Transfer, Inc.* case. The court ruled that when a workers' compensation claim is denied for failure to prove that the work-related incident was the major contributing cause of the injury or condition, then the exclusive-remedy provisions implemented by SB 369 are unconstitutional. The court ruled that the statute violated Article 1, Section 10 of the Oregon Constitution. This section guarantees every Oregonian "remedy by due course of law for injury done him in his person, property, or reputation." Under these circumstances, the employee whose claim has been denied may take civil action against the employer.

The 2001 Legislature passed SB 485, in part to address this court decision. SB 485 created a process for civil suits against employers. It also revised the definitions of pre-existing conditions and established that while a worker continues to have the burden of proving that the claim is compensable, the employer has the burden of proof in showing that the compensable condition is not the major contributing cause of the need for treatment.

It was expected that the *Smothers* decision would have a significant impact on workers' compensation costs. Early estimates were that the decision could affect as many as 1,300 cases per year and cost up to \$50 million per year. In fact, there have been no known cases in which workers have prevailed at trial and only a few cases in which workers have received settlements.

Figure 6. Disabling claims denial rate, FY 1989-2008



### Claim denial rates

The denial rate of disabling claims has been fairly constant for more than a decade, with the fiscal year 2008 denial rate of 14 percent maintaining this trend and keeping consistent with the previous two years (14.1 and 14.7 percent, respectively). This period of stability follows a short period of higher denial rates. Largely as a result of a major change in SAIF's claims-management practices, the denial rate of disabling claims jumped from 14 percent in fiscal year 1989 to 21 percent in fiscal year 1990; the denial rate for disabling occupational disease claims jumped from 34 percent to 44 percent. Concerned about the increased denial rates, the department conducted a study of denied disabling claims in late 1991 and early 1992. As a result of the study, SAIF again changed its claims-handling procedures. The denial rate of disabling claims declined to 17 percent in fiscal year 1993.

### Oregon Population Survey

The Oregon Population Survey includes questions about workplace injuries and workers' compensation claims. Survey results show that just over 5 percent of Oregonians employed in 2005 were injured on the job and required the attention of a medical provider. Almost 80 percent of injured workers reported missing at least one day of work, while 40 percent reported missing at least a month.

The survey also found that 46 percent of workers injured on the job do not file a workers' compensation claim. Those not filing included workers employed in positions not covered by workers' compensation insurance and therefore not eligible to file a claim, as well as those with workers' compensation coverage. The most common reasons given by covered workers for not filing a claim included the belief that their medical insurance would cover the costs, feeling that they were to blame for the injury, or that their recovery was quick.