

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 was revised several times between 1987 and 1995. 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; SB 369 (1995) revised the language. 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 in SB 1197 and SB 369 on workers' compensation costs and worker benefits. They also wanted to know if physicians, now required to determine the extent to which a medical condition is due to the compensable injury, could accurately make such decisions. A final goal, prompted by a case before the Oregon Supreme Court, was to look at the major contributing cause language in combination with the exclusive remedy language for denied claims. The case, *Smothers v. Gresham Transfer, Inc.*, asserted this combination unconstitutionally denied injured workers with pre-existing medical conditions of a legal remedy for their injuries.

The department contracted with the Workers' Compensation Center at Michigan State University to complete the study. Enlisting the services of several of the country's leading workers' compensation researchers, the study examined more than 1,500 denials. The researchers found that many of the claims denied due to major contributing cause language would have been denied for other reasons. They also surveyed physicians who, while emphasizing it requires medical expertise to apply the major contributing cause standard accurately, reported the standard was practical.

Because workers' compensation costs declined throughout the nation during the 1990s, the researchers conducted econometric analyses to estimate the benefit changes caused by the Oregon legislative changes apart from the national trends. They concluded that, due to a drop in the number of claims, SB 1197 and SB 369 resulted in a reduction in workers' compensation system costs of at least 6.4 percent and 6.7 percent, respectively. The average cost per claim remained about the same.

Researchers found the Oregon standard for compensability was the strictest used by any state. The major contributing cause standard was used in three other states, but their courts generally ruled that when workers' compensation benefits are denied to a certain group of claims, the claimants are not restricted by exclusive-remedy clauses and could file civil actions against their employers. This suggested that the Oregon Supreme Court 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, which guarantees every Oregonian "remedy by due course of law for injury done him in his person, property, or reputation."

The 2001 Legislature addressed this court decision by passing SB 485, which created a process for worker 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.

Although it was estimated that the *Smothers* decision could affect as many as 1,300 cases per year and cost up to \$50 million per year, there have been no known cases in which workers have prevailed at trial; in a few cases workers have received settlements.