

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 PROCEDURAL RULES GOVERNING RULEMAKING AND HEARINGS

REVISION-MARKED COPY

[Bracketed 8 point text is deleted]; bold/underlined text is added

EFFECTIVE JULY 1, 2005

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 001
 PROCEDURAL RULES GOVERNING RULEMAKING AND HEARINGS

NOTE: Only adopted, amended, and repealed rules are included in this document:

436-001-0265 Attorney Fees

(1) In cases where the director is required to assess an attorney fee under ORS 656.385(1) [(\$2, ch. 756, OL 2003)]:

(a) The fee must be based on the factors listed in ORS 656.385(1) [(\$2, ch. 756, OL 2003)].

(b) Absent a showing of extraordinary circumstances or unless otherwise agreed by the parties, the fee may not exceed \$2,000 nor fall outside the ranges provided in the following matrix:

Estimated [Results] Benefit Achieved	[Attorney Time] Professional Hours Devoted				
	1-2 hours	2.1-4 hours	4.1-6 hours	6.1-8 hours	[8.1-12] Over 8 hours
\$1-\$2000	\$100-400	\$200-700	\$300-750	\$600-1000	\$800-1250
\$2001-\$4000	\$200-500	\$400-800	\$600-900	\$800-1300	\$1050-1500
\$4001-\$6000	\$300-700	\$600-1000	\$800-1250	\$1000-1450	\$1300-1750
[\$6001-\$10000] Over \$6000	\$400-900	\$800-1300	\$1050-1600	\$1350-1800	\$1550-2000

(c) Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.

[~~(c)~~](**d**) In cases under ORS 656.245, 656.260, or 656.327, the factors listed in OAR 436-010-0008(13) may also be considered.

[~~(d)~~](**e**) In cases under ORS 656.340, the factors listed in OAR 436-120-0008(2) may also be considered.

(2) Except as provided in section (3), in cases where the administrative law judge or director assesses an attorney fee, the following factors may also be considered:

- (a) The complexity of the issue(s) involved;
- (b) The quality of the legal representation;
- (c) The value of the interest involved;

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- (d) The nature of the proceedings;
 - (e) The risk in a particular case that an attorney's efforts may go uncompensated;
 - (f) The assertion of frivolous issues or defenses;
 - (g) A statement of services, if submitted within seven days of the hearing date, unless the administrative law judge instructs otherwise; and
 - (h) Any other relevant consideration deemed appropriate by the administrative law judge or director.
- (3) In cases under ORS 656.262(11)[(§1, ch. 756, OL 2003)] where the issue is solely the assessment and payment of a penalty and attorney fee, OAR 438-015-0110 applies.
- (4) If an attorney fee has been assessed by an administrative law judge in a proposed order, the opposing parties may file written exceptions to the fee under OAR 436-001-0275.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.262, 656.385, 656.388 and 656.704(2) [(and ch. 756, OL 2003)]

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