



COLUMBIA-WILLAMETTE
CHAPTER



RIMS
OREGON CHAPTER

Invisible Work Injuries: The Hidden Challenges of Occupational Disease Claims



Anne Maiers
Vice President,
Workers' Compensation &
Commercial Data & Analytics
Specialist, IMA Financial Group



Jon Propst
Claims Manager
Sedgwick



AGENDA

Introduction

Discussion

- Overview of Occupational Diseases
- Common occupational diseases and their causes
- Legal and medical considerations in occupational disease claims
- Effective investigation and documentation techniques
- Strategies for managing and mitigating claim risks

Wrap-Up and Q&A

What is an Oregon Occupational Disease? ORS 656.802

(1)

(a) As used in this chapter, “occupational disease” means any disease or infection arising out of and in the course of employment caused by substances or activities to which an employee is not ordinarily subjected or exposed other than during a period of regular actual employment therein, and which requires medical services or results in disability or death, including:

(A) Any disease or infection caused by ingestion of, absorption of, inhalation of or contact with dust, fumes, vapors, gases, radiation or other substances.

(B) Any mental disorder, whether sudden or gradual in onset, which requires medical services or results in physical or mental disability or death.

(C) Any series of traumatic events or occurrences which requires medical services or results in physical disability or death.

(b) As used in this chapter, “mental disorder” includes any physical disorder caused or worsened by mental stress.

(2)

(a) The worker must prove that employment conditions were the major contributing cause of the disease.

(b) If the occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005 (Definitions) (7), the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease.

(c) Occupational diseases shall be subject to all of the same limitations and exclusions as accidental injuries under ORS 656.005 (Definitions) (7).

(d) Existence of an occupational disease or worsening of a preexisting disease must be established by medical evidence supported by objective findings.

(e) Preexisting conditions shall be deemed causes in determining major contributing cause under this section.

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(3) Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

(4)

(a) Death, disability or impairment of health of firefighters of any political division who have completed five or more years of employment as firefighters, caused by any disease of the lungs or respiratory tract, hypertension or cardiovascular-renal disease, and resulting from their employment as firefighters is an “occupational disease.” Any condition or impairment of health arising under this subsection shall be presumed to result from a firefighter’s employment. However, any such firefighter must have taken a physical examination upon becoming a firefighter, or subsequently thereto, which failed to reveal any evidence of such condition or impairment of health which preexisted employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the cause of the condition or impairment is unrelated to the firefighter’s employment.

(b) Notwithstanding [ORS 656.027 \(Who are subject workers\)](#) (6), a city that provides a disability or retirement system for firefighters by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters covered by the disability or retirement system, shall apply:

(A) The provisions of this subsection; and

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in [ORS 656.807 \(Time for filing of claims for occupational disease\)](#) (1) and (2).

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(5)

(a) Death, disability or impairment of health of a nonvolunteer firefighter employed by a political division or subdivision who has completed five or more years of employment as a nonvolunteer firefighter is an occupational disease if the death, disability or impairment of health:

(A) Is caused by brain cancer, colon cancer, stomach cancer, testicular cancer, prostate cancer, multiple myeloma, non-Hodgkin's lymphoma, cancer of the throat or mouth, rectal cancer, breast cancer, leukemia, bladder cancer or gynecologic cancer of the uterus, fallopian tubes, ovaries, cervix, vagina or vulva;

(B) Results from the firefighter's employment as a nonvolunteer firefighter; and

b) Any condition or impairment of health arising under this subsection is presumed to result from the firefighter's employment. Denial of a claim for any condition or impairment of health arising under this subsection must be on the basis of clear and convincing medical evidence that the condition or impairment was not caused or contributed to in material part by the firefighter's employment.

(c) Notwithstanding paragraph (b) of this subsection, the presumption established under paragraph (b) of this subsection may be rebutted by clear and convincing evidence that the use of tobacco by the nonvolunteer firefighter is the major contributing cause of the cancer.

(d) The presumption established under paragraph (b) of this subsection does not apply to prostate cancer if the cancer is first diagnosed by a physician after the firefighter has reached the age of 55. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of prostate cancer without benefit of the presumption.

(e) The presumption established under paragraph (b) of this subsection does not apply to claims filed more than 84 months following the termination of the nonvolunteer firefighter's employment as a nonvolunteer firefighter. However, nothing in this paragraph affects the right of a firefighter to establish the compensability of the cancer without benefit of the presumption.

(f) The presumption established under paragraph (b) of this subsection does not apply to volunteer firefighters.

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(g) Nothing in this subsection affects the provisions of subsection (4) of this section.

(h) For purposes of this subsection, “nonvolunteer firefighter” means a firefighter who performs firefighting services and receives salary, hourly wages equal to or greater than the state minimum wage, or other compensation except for room, board, lodging, housing, meals, stipends, reimbursement for expenses or nominal payments for time and travel, regardless of whether any such compensation is subject to federal, state or local taxation. “Nominal payments for time and travel” includes, but is not limited to, payments for on-call time or time spent responding to a call or similar noncash benefits.

(6) Notwithstanding ORS 656.027 (Who are subject workers) (6), any city providing a disability and retirement system by ordinance or charter for firefighters and police officers not subject to this chapter shall apply the presumptions established under subsection (5) of this section when processing claims for firefighters covered by the system.

(7)

(a) As used in this subsection:

(A) “Acute stress disorder” has the meaning given that term in the DSM-5.

(B) “Covered employee” means an individual who, on the date a claim is filed under this chapter:

(i) Was employed for at least five years by, or experienced a single traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion A for diagnosing post-traumatic stress disorder while employed by, the state, a political subdivision of the state, a special government body, as defined in ORS 174.117 (“Special government body” defined), or a public agency in any of these occupations:

(I) A full-time paid firefighter;

(II) A full-time paid emergency medical services provider;

(III) A full-time paid police officer;

(IV) A full-time paid corrections officer or youth correction officer;

(V) A full-time paid parole and probation officer; or

(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator; and

(ii) Remains employed in an occupation listed in sub-subparagraph (i) of this subparagraph or separated from employment in the occupation not more than seven years previously.

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(C) “DSM-5” means the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(D) “Post-traumatic stress disorder” has the meaning given that term in the DSM-5.

(E) “Psychiatrist” means a psychiatrist whom the Oregon Medical Board has licensed and certified as eligible to diagnose the conditions described in this subsection.

(F) “Psychologist” means a licensed psychologist, as defined in ORS 675.010 (Definitions for ORS 675.010 to 675.150), whom the Oregon Board of Psychology has certified as eligible to diagnose the conditions described in this subsection.

(b) Notwithstanding subsections (2) and (3) of this section, if a covered employee establishes through a preponderance of persuasive medical evidence from a psychiatrist or psychologist that the covered employee has more likely than not satisfied the diagnostic criteria in the DSM-5 for post-traumatic stress disorder or acute stress disorder, any resulting death, disability or impairment of health of the covered employee shall be presumed to be compensable as an occupational disease. An insurer or self-insured employer may rebut the presumption only by establishing through clear and convincing medical evidence that duties as a covered employee were not of real importance or great consequence in causing the diagnosed condition.

(c) An insurer’s or self-insured employer’s acceptance of a claim of post-traumatic stress disorder or acute stress disorder under this subsection, whether the acceptance was voluntary or was a result of a judgment or order, does not preclude the insurer or the self-insured employer from later denying the current compensability of the claim if exposure as a covered employee to trauma that meets the diagnostic criteria set forth as Criterion A in the DSM-5 for post-traumatic stress disorder or acute stress disorder ceases being of real importance or great consequence in causing the disability, impairment of health or a need for treatment.

(d) An insurer or self-insured employer may deny a claim under paragraph (c) of this subsection only on the basis of clear and convincing medical evidence.

(e) Notwithstanding [ORS 656.027 \(Who are subject workers\)](#) (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:

ORS 656.802

(A) The provisions of this subsection; and

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in [ORS 656.807 \(Time for filing of claims for occupational disease\)](#) (1) and (2).

(e) Notwithstanding [ORS 656.027 \(Who are subject workers\)](#) (6), a city that provides a disability or retirement system for firefighters and police officers by ordinance or charter that is not subject to this chapter, when accepting and processing claims for death, disability or impairment of health from firefighters and police officers covered by the disability or retirement system, shall apply:

(A) The provisions of this subsection; and

(B) For claims filed under this subsection, the time limitations for filing claims that are set forth in [ORS 656.807 \(Time for filing of claims for occupational disease\)](#) (1) and (2).

ORS 656.807 – Statute of Limitations

(1) All occupational disease claims shall be void unless a claim is filed with the insurer or self-insured employer by whichever is the later of the following dates:

(a) One year from the date the worker first discovered, or in the exercise of reasonable care should have discovered, the occupational disease; or

(b) One year from the date the claimant becomes disabled or is informed by a physician that the claimant is suffering from an occupational disease.

(2) If the occupational disease results in death, a claim may be filed within one year from the date that the worker's beneficiary first discovered, or in the exercise of reasonable care should have discovered, that the cause of the worker's death was due to an occupational disease.

(3) The procedure for processing occupational disease claims shall be the same as provided for accidental injuries under this chapter.

Most Common Occupational Diseases

- Repetitive Motion (i.e. Carpal Tunnel Syndrome, Tendonitis/Tenosynovitis and General Joint/Back pain)
- Skin Diseases/Exposure Claims
- Hearing Loss
- Stress/Mental Health

Who's the LIER?

For Occupational Disease Claims, Many workers work over a long period of time and for several different employers. The Oregon Workers' Compensation system allows an injured worker to prove that all the work for several employers caused the medical condition and then let the several employers sort it all out. This is known as the Last Injurious Exposure Rule, or "LIER."

LIER states that if work with the most recent employer COULD have contributed to the condition (mostly seen in Hearing Loss claims), then that employer is responsible for the claim.

The employer may attempt to shift responsibility for a claim to a prior employer if they can prove the work they did for their company could not have caused the condition. This is usually done via medical reports and experts.

If there is dispute between several employers over who is responsible for the claim, the Oregon Workers' Compensation Division will assign a "paying agent", or a carrier to administer benefits until the litigation for the claim has been concluded.

Skin Diseases/Exposure Claims

For today's discussion, we will not focus extensively on these conditions as most of these claims are handled as injury (also known as specific incident) claims as the vast majority of workplaces meet and/or exceed OSHA requirements for the everyday work environment.

An example, employees are no longer working in places with lead paint and/or where asbestos is highly prevalent.

While there are exposures for skin diseases and exposure claims, over 95% of these exposures are related to specific incidents. By definition, these are occupational diseases, however they are handled as specific incident.

Carpal Tunnel Syndrome

Per the Mayo Clinic, Carpal Tunnel Syndrome:

“is one of the most common hand conditions. It is caused by pressure on the median nerve in the carpal tunnel of the wrist. The carpal tunnel is a narrow passageway surrounded by bones and ligaments on the palm side of the hand. When the median nerve is compressed, symptoms can include numbness, tingling and weakness in the thumb and fingers.”

Medical providers often use Carpal Tunnel as a catch phrase for any person who has wrist pain, numbness, tingling, etc.

“Anything that squeezes or irritates the median nerve in the carpal tunnel space may lead to carpal tunnel syndrome. A wrist fracture can narrow the carpal tunnel and irritate the nerve, as can the swelling and inflammation caused by rheumatoid arthritis.

Many times, there is no single cause of carpal tunnel syndrome. It may be that a combination of risk factors contributes to the development of the condition.”

Can you get Carpal Tunnel from work? **Maybe**

Carpal Tunnel Syndrome

“Working with vibrating tools or on an assembly line that requires repeated movements that flex the wrist may create pressure on the median nerve. Such work also may worsen existing nerve damage. Pressure on the nerve can be worse if the work is done in a cold environment.

However, the scientific evidence is conflicting and these factors haven't been established as direct causes of carpal tunnel syndrome.

Several studies have evaluated whether there is a link between computer use and carpal tunnel syndrome. Some evidence suggests that mouse use, but not the use of a keyboard, may be related to carpal tunnel syndrome. There has not been enough quality and consistent evidence to support extensive computer use as a risk factor for carpal tunnel syndrome. However, computer use may cause a different form of hand pain.”

<https://www.mayoclinic.org/diseases-conditions/carpal-tunnel-syndrome/symptoms-causes/syc-20355603>

Carpal Tunnel Syndrome

What benefits are available for workers' who file Carpal Tunnel Claims?

Temporary Disability (Wage Loss) Benefits

Lifetime medical benefits

Including but not limited to doctor visits, prescription medications, diagnostic testing, surgery.

Permanent Disability award

Dependent on results of surgery and range of motion of the wrist.

Average cost of a Carpal Tunnel claim?

For a date of injury after 1/1/2025, the average Carpal Tunnel claim is approximately \$30,000.00, which included medical benefits and any indemnity benefits.

Carpal Tunnel Syndrome

How can Carpal Tunnel Syndrome be prevented?

As much as possible, eliminate or reduce exposure to fine manipulation and/or use of vibratory tools.

Ensure the ergonomics of the employees work environment make the workers as comfortable as possible.

Hearing Loss

There are different kinds of conditions which all fall under the umbrella of Hearing Loss. Hearing Loss is the most common Occupational Disease.

Most common industries with Hearing Loss Claims:

Ag/Forestry/Fishing
Construction
Manufacturing
Mining/Quarrying/Oil & Gas
Transportation/Utilities

Hearing Loss

What benefits are available for workers who file Occupational Hearing Loss claims?

Lifetime medical benefits

Including but not limited to hearing aids and supplies, audiograms, etc.

Permanent Disability award

Dependent on total hearing loss.

Average cost of a hearing loss claim?

For a date of injury after 1/1/2025, the average hearing loss claim is approximately \$65,000.00, which included medical benefits and any indemnity benefits.

Hearing Loss

How can Hearing Loss be prevented?

- As much as possible, eliminate or reduce noise exposure.
- Supply proper PPE and hearing protection and ensure compliance in using the PPE.
- Obtain annual hearing tests for your employees
- Keep good records and ensure noise exposure is measured at least annually.

Stress/Mental Health

As a brief reminder, Oregon requirements for Mental Health Claims under ORS 656.802:

- (3)** *Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:*
- (a)** *The employment conditions producing the mental disorder exist in a real and objective sense.*
 - (b)** *The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.*
 - (c)** *There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.*
 - (d)** *There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.*

Stress/Mental Health

Let's break down each section.

(a) The employment conditions producing the mental disorder exist in a real and objective sense.

In other words:

There must be confirmation that the workers' condition has a real, verifiable cause—meaning there is an actual hazard present, not merely a perceived one.

Stress/Mental Health

(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

In other words:

The worker must be able to provide objective and verifiable documentation showing that they experienced a workload increase that was not assigned to other employees, that the condition is unrelated to progressive discipline or good-faith performance management actions, and that it was not caused by an involuntary termination such as a layoff or reduction in force.

Stress/Mental Health

(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

In other words:

The workers' medical provider must provide objective and clear evidence that the condition is verified and meets currently acceptable psychological/medical diagnosis requirements.

Stress/Mental Health

(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.

In other words:

The worker must prove that their current condition arose out of and was in the course of their employment duties.

Stress/Mental Health

With the exception of PTSD types of claims, most Stress/Mental Health claims are not considered work related as the workers are not able to prove all 4 requirements to have a compensable claim:

1. The condition is real
2. The condition was caused by work duties that exceeded those assigned to other employees and is not connected to personal decisions or normal performance-related discussions.
3. Their condition is recognized by medical science
4. Their condition did arise out of their job duties

Stress/Mental Health

What about PTSD types of claims?

Claims arising out of a sudden and extra-ordinary event are subject to a different set of rules which govern accident claims, or specific incident claims. These types of claims require verification of the event in question to be considered work related.

Examples:

Bank robberies

Witnessing a catastrophic event/injury while performing work duties.

Stress/Mental Health

What benefits are available to workers' claiming mental health benefits?

- Temporary Disability

- Medical Treatment

- Possibility Permanent Disability, based on the workers' status at the time of claim closure.

Average cost of a mental health claim? For a date of injury after 1/1/2025, the average accepted mental health claim is approximately \$100,000.00, which included medical benefits and indemnity benefits.

Effective Investigation and Documentation

As with any work-related condition, documentation and records are key. The more information you have you can provide to your insurer and/or examiner the better it is.

Also make sure all job descriptions have the physical demands of the job listed. This is often the make or break of an investigation.

If possible, create videos of what your people actually do on a day-to-day basis, this can prove to be invaluable during the investigation portion of a claim.

Managing and Mitigating Claim Risks

Ensure employee work locations are clean and have modern equipment as much as possible. Most modern equipment is developed with workplace safety in mind.

Allow and encourage employees to take breaks during the day to allow their bodies to rest as practical for business needs.

Maintain a good relationship with your insurer/TPA and/or Examiner. Relationships and good communication are key to ensure positive claims outcomes.



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Thank you. Questions?



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