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The Exclusive Remedy of the Oregon Workers' Compensation Act: Is it Under Threat?

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By Julia Hier & James Sikora

What is the Exclusive Remedy?



If it is applied, it protects employers
from other claims, outside of workers'
compensation, relating to a work injury.

The Statute



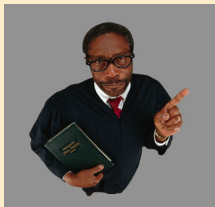
ORS 656.018(7) provides: "[t]he
exclusive remedy provisions and
limitation on liability provisions of this
chapter apply to all injuries and to
diseases, symptom complexes or similar
conditions of subject workers arising out
of and in the course of employment
whether or not they are determined to be
compensable under this chapter."

History



But...

As is typical, there is a but...



A New Rule

After *Smothers*, the legislature enacted
ORS 656.019.



The Board

Will the Board conclude whether claimant established "material cause" when the denial is upheld under a theory of major cause?



The Scope of Protection

Wrongful Death



Discrimination



Infliction of Emotional Distress



Wrongful Termination

- Will the Exclusive Remedy Statute preclude a claim for wrongful discharge?



Who Does the Protection Extend to?

- Employer
- Insurer
- Department
- Employees, officers, and directors of the above.

Vocational Retraining



Disputed Claim Settlements

- Disputed claim settlement disposing of all claims raised or raisable relating to workers' compensation claim did not preclude actions against company officer for intentional tort.

Terris v. Stodd, 126 Or App 666 (1994).

Legislation

- Recent Legislative Proposals, such as House Bill 4048.
 - The Proposal
 - Why it failed
- Potential for future legislation on the issue.

Strategies



Questions?

Julia M. Hier
jhier@mcbuslaw.com

James Sikora
jsikora@mcbuslaw.com

MacColl Busch Sato
5335 Meadows Road, Suite 400
Lake Oswego, OR 97035
503-597-6200

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Thank You
