

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

In the Matter of the Amendment of)
Oregon Administrative Rule (OAR)) ORDER OF ADOPTION
Chapter 436, Division 115, Worksite)
Redesign Program)

The Director of the Department of Consumer and Business Services, pursuant to the general rule making authority under ORS 656.726(3) and in accordance with the procedure provided by ORS 183.335, amends OAR Chapter 436, Department of Consumer and Business Services, Division 115, Worksite Redesign Program.

On March 12, 1997, the Workers' Compensation Division filed Notice of Public Hearing with the Secretary of State to amend rules governing Worksite Redesign Program. The Statement of Need and Fiscal Impact were also filed with the Secretary of State.

Copies of the notice were mailed to interested persons in accordance with ORS 183.335(7) and OAR 436-001-0000 and to those on the Division's distribution mailing list as their interest indicated. The notice was published in the April 1, 1997, Secretary of State's Administrative Rule Bulletin.

On April 22, 1997, a public hearing was held as announced. In addition, the hearing record was held open for written testimony through 5:00 p.m. April 25, 1997. A written summary of the testimony and agency responses thereto is contained in Exhibit "C." This summary, as well as principal documents relied upon, is on file and available for the public inspection between the hours of 8:00 a.m. and 5:00 p.m., normal working days Monday through Friday in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, Salem, Oregon 97310.

EXPLANATION: These rules broaden the definition of "applicant" to allow employee groups, associations and educational institutions to apply for worksite redesign grants. Documentation including general industry workplace problems other than an applicant's record of accepted compensable claims can be used to justify grant funding. Research and analysis of workplace problems as an activity separate from development of solutions to workplace problems can be funded. Clarification is given regarding the director's authority to sanction parties who violate the rules and contract provisions. Should sanctions be necessary, the rule gives the director authority to serve notice of civil penalties by certified mail or direct service.

VERTICAL BARS IN THE RIGHT MARGIN INDICATE SIGNIFICANT CHANGES.

Having reviewed and considered the record of public hearing and being fully advised, I make the following findings:

- a. The applicable rule making procedures have been followed.
- b. The rules are within the Director's authority.
- c. The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

PURSUANT TO THE AMERICANS WITH DISABILITIES ACT GUIDELINES, ALTERNATE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE TO QUALIFIED INDIVIDUALS UPON REQUEST TO THE DIVISION

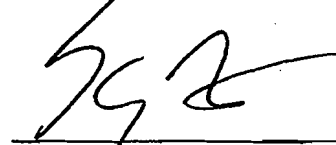
If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 945-7881.

IT IS THEREFORE ORDERED THAT:

- (1) OAR Chapter 436, Division 115, Worksite Redesign Program, as set forth in Exhibit "A" attached hereto, is certified a true copy and hereby made part of this Order, are adopted effective June 1, 1997.
- (2) A certified true copy of the Order of Adoption and these rules, with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need, Principal Documents Relied On and Statement of Fiscal Impact, attached hereto and hereby made a part of this Order, be filed with the Secretary of State.
- (3) A copy of the rules and attached Exhibit "B" be filed with the Legislative Counsel pursuant to the provisions of ORS 183.715 within ten days after filing with the Secretary of State.

Dated this 29th day of May, 1997

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES



Kerry Barnett, Director

Attachments

Distribution: WCD-ID, S, T, U, IA, EG, NM, LL, LU, RE, DD

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
WORKSITE REDESIGN PROGRAM

EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 115

EFFECTIVE JUNE 1, 1997

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436-115-0001 Authority for Rules

The director has adopted OAR 436-115 under authority of ORS 656.622(9) and ORS 656.726(3).

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0002 Purpose of Rules

These rules explain what assistance is available from the Worksite Redesign Program, who is qualified and how to receive assistance. The department may solicit applications for worksite redesign grants and product grants in order to prevent the recurrence of on-the-job injuries and diseases.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96

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Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0003 Applicability of Rules

These rules apply to all requests for Worksite Redesign Program assistance received by the department on or after the effective date of these rules. Worksite Redesign Program assistance shall only be provided in Oregon.

Sta. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

436-115-0005 Definitions

(1) "Applicant" means the employer, employer group, employee group, educational association or educational institution which applies for a grant. An employer group or employee group may be created for the sole purpose of applying for and administering a worksite redesign grant.

(2) "Committee" means the Application Review Committee. Committee members are appointed by the director. The Committee recommends approval or disapproval of worksite redesign grants to the director.

(3) "Employer" means an Oregon employer within the meaning of the Workers' Compensation Law.

(4) "Fund" means the Workers' Benefit Fund.

(5) "Grant agreement" means the contract between the department and the grantee following department approval of the application for a worksite redesign grant.

(6) "Grant product" means the workplace ergonomic solution resulting from an approved grant agreement.

(7) "OR-OSHA" means the Oregon Occupational Safety and Health Division.

(8) "Product grant" means the amount of funding awarded an employer for the purchase of a grant product.

(9) "Worksite redesign grant" means a grant for the purpose of performing research and analysis of a workplace problem, or for development of a solution to a workplace problem in order to prevent or reduce the incidence of on-the-job injuries and illnesses.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070 (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0006 Administration of Rules

(1) All payments under the Worksite Redesign Program are subject to the availability of funds. The director has final authority to approve/disapprove requests for assistance and to determine how the funds will be disbursed.

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(2) In addition to approving worksite redesign grants, the director may use the Fund for educational activities to provide information about and encourage application for grants for prevention or reduction of on-the-job injuries and illnesses.

(3) Pursuant to ORS 656.622, decisions by the director regarding Worksite Redesign Program assistance may not be reviewed by any court or other administrative body.

(4) The following conditions apply to all ideas, concepts, know-how, techniques, processes, methods, inventions, discoveries, developments, innovations and improvements conceived or made by a grantee, a grantee's employees or a grantee's contractors resulting from work under a worksite redesign grant:

(a) Public use of a new product design. All inventions and copyright works arising from work conducted under a worksite redesign grant shall be dedicated to the public domain without any limitation on their use by the public. Neither DCBS nor grant recipient will hold trade secrets as a result of work conducted under a worksite redesign grant.

(b) The grantee agrees to abandon any and all ideas, concepts, know-how, techniques, processes, methods, inventions, discoveries, developments, innovations and improvements ("Inventions") conceived or made by the grantee, the grantee's employees, or the grantee's contractors, whether alone or with others, resulting from work under the grant. The grantee agrees to disclose all such Inventions to the department promptly and to provide all assistance reasonably requested by the department to document the abandonment of such Inventions and/or dedication of such Inventions to the public domain. There shall be no restriction on the manufacture, use or sale of such Inventions by the public.

(c) Published works produced by grantee shall bear an acknowledgment of support through the use of the following or comparable statement: "This material has been made possible by a grant from the Oregon Department of Consumer and Business Services."

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0020 Assistance Available under the Worksite Redesign Program

Assistance from the Fund will be in the form of grants. Grants will include partial funding for research and analysis of workplace problems, for development of solutions to workplace ergonomic problems and for purchase of grant products. If a readily available solution to the ergonomic problem has been identified by the applicant or known to DCBS, the project will not be approved. However, if during the research phase of a funded project a previously unknown solution is found, the grant agreement may be amended to permit purchase and evaluation of the new-found solution.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
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436-115-0050 Eligibility for Worksite Redesign Assistance

(1) As part of the application, the applicant shall have documentation of the workplace problem such as accepted compensable claims, incident reports, OSHA 200 logs, hazard evaluations or statistical reports of injuries and illnesses for the industry and/or occupation for which the applicant seeks an ergonomic solution.

(2) An applicant shall identify an employer as the research site and/or the recipient of the prototype design or grant product. That designated employer and those employers who apply for a product grant must meet the following eligibility conditions:

(a) The employer has and maintains Oregon workers' compensation insurance coverage as required by law;

(b) Business operations are ongoing and have continued for the three-year period prior to the date the applicant submits the application to the department;

(c) The employer demonstrates financial stability and solvency by providing for the three-year period prior to the date the applicant submits the application one of the following: a letter of evaluation by an independent certified public accounting firm; a letter of credit; tax records; audited profit and loss statements and balance sheets; or audited annual reports;

(d) The employer has no bankruptcy or receivership action and no judgments for nonpayment of wages/debts within the one-year period prior to the date the department receives the application;

(e) At the time the applicant submits the application, the employer has no outstanding OR-OSHA citations at any of the employer's locations or sites with unabated/uncorrected safety or health hazards associated with the equipment or process that is the subject of the application; and,

(f) The employer provides information about the employer's early-return-to-work program.

(3) Reasons for ending Worksite Redesign Program eligibility which apply to all applicants as defined in OAR 436-115-0005(1) include:

(a) Misrepresentation or omission of information by the applicant to obtain assistance;

(b) Failure of the applicant to provide requested information or to cooperate in the Worksite Redesign Program grant review process or in the development or implementation of an approved grant;

(c) The applicant is precluded from receiving Worksite Redesign Program assistance in accordance with OAR 436-115-0150;

(4) Reasons for ending Worksite Redesign Program eligibility which apply to employer applicants, employers designated in the grant application as the research site and/or the recipient of the prototype design and employers who are grant product recipients include:

(a) The employer does not maintain Oregon workers' compensation insurance coverage as required by law;

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(b) The employer, after requesting Worksite Redesign Program assistance, becomes subject to bankruptcy or receivership action or incurs judgment for nonpayment of wages/debts; or,

(c) The employer, after requesting Worksite Redesign Program assistance, is issued a citation by OR-OSHA resulting from a fatality investigation, accident investigation, a complaint investigation, or a referral from another agency, which is related to or associated with, the subject of the worksite redesign grant. The department will hold in abeyance any requests for Worksite Redesign Program assistance until the OR-OSHA enforcement action is resolved.

(5) An employer who enters into negotiation for sale or merger of business after requesting Worksite Redesign Program assistance shall provide the department documentation of its ongoing commitment and ability to undertake and complete the activities as described in its grant application. The department will review the material provided by the employer and will determine the appropriateness and feasibility of proceeding with the grant request process.

Stat Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0070 Procedure to Use the Worksite Redesign Program

(1) An applicant shall submit a complete, written application in the form and format prescribed by the director.

(2) The department may provide education and consultation to potential applicants, applicants and grantees.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0090 Application Review

(1) Upon receipt of an application, the department may authorize consultative services provided by consultants under contract.

(2) The department shall review applications and prepare staff reports for Committee review.

(3) After department review, the worksite redesign grant application and corresponding staff report shall be forwarded to the Committee for review.

(4) In reviewing worksite redesign grant applications, the Committee shall consider the following elements:

- (a) Program eligibility criteria;
- (b) Funding limitations established by the director;
- (c) The funding priorities established by the department;
- (d) The quality review criteria established by the department;

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- (e) The staff report provided by the department;
 - (f) Feasibility and appropriateness to recommend approval for an employer who is negotiating sale or merger; and,
 - (g) Appropriateness to recommend approval for a grant which may result in a reduction in the employer's labor force.
- (5) Following completion of a worksite redesign grant, the department may solicit applications for a product grant.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0110 Grant Awards

- (1) The department shall notify applicants, in writing, of the approval or disapproval of the grant request.
- (2) The applicant shall provide reports and documentation relating to the grant and the terms and conditions agreed to in connection with the grant.
- (3) Grant recipients shall make available to the department all records and materials necessary to monitor a grant.
- (4) Upon approval of the worksite redesign grant application, the department will authorize funding, to include disbursement intervals, in accordance with the conditions agreed upon in the approved grant agreement.
- (5) Upon approval of the product grant application, the department will authorize funding in accordance with the conditions agreed upon in the approved grant agreement.

Stat Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0120 Program Evaluation

The director will conduct studies to evaluate the Worksite Redesign Program's success in precluding on-the-job injuries. Findings of such studies will be presented to the Management/Labor Advisory Committee.

Stat Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

436-115-0130 Audits

- (1) Applicants selected for funding are subject to periodic program and fiscal audits.
- (2) The grantee shall maintain case files, notices, records, reports, receipts and canceled checks or payment verification documenting use of any and all Worksite Redesign Program funds as well as funds the grantee commits to an approved Worksite Redesign Program grant

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project. These records shall be maintained for a period of three years after the last grant disbursement.

(3) The department reserves the right to visit the worksite to determine compliance with the Worksite Redesign Program agreement.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

436-115-0150 Sanctions

If the director finds any violation of OAR 436-115-0006, 436-115-0050, 436-115-0110, 436-115-0130, or if the terms and conditions under which the agreement was approved are not met, the director may take one or more of the following actions:

- (1) Immediately revoke approval of the use of the Worksite Redesign Program funds;
- (2) Require repayment of all or a portion of any funds advanced;
- (3) Prohibit the employer, employee group or association, or educational institution from receiving additional grants for a period of up to three years; and

(4) Issue a civil penalty against the employer in an amount not to exceed \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period. Each violation, or each day a violation continues, shall be considered a separate violation. All penalties collected under this section shall be paid into the Department of Consumer and Business Services Fund. In determining the amount of penalty, the director shall consider:

- (a) The degree of harm inflicted due to the offense;
- (b) Whether there have been previous violations; and
- (c) Whether there is evidence of willful violation.

Stat Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

436-115-0160 Issuance/Service of Penalty Orders

(1) When a penalty is assessed as provided by OAR 436-115-0150, the Division shall serve an order on the party, with a notice of the rights provided under ORS 656.740.

(2) The Division shall serve the Order by delivering a copy to the party in the manner provided by ORCP 7D.(3); or by sending a copy to the party by certified mail with return receipt requested.

Stat. Auth: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

Exhibit "C"

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

In the Matter of the Amendment of)
OAR Chapter 436, Division 115,) SUMMARY OF TESTIMONY
Worksite Redesign Program) AND AGENCY RESPONSES
)

This document relates to the Order of Adoption, WCD Administrative Order No. 97-055. It constitutes and contains a summary of the significant data, views, and arguments contained in the hearing record.

The purpose of this summary is to provide the Director with a record of the agency conclusions about the major issues raised.

The amendment to the rules was announced in the Secretary of State's Administrative Rules Bulletin dated April 1, 1997. On April 22, 1997, a public hearing was held as announced. The major issues raised were:

Testimony: SAIF Corporation requested OAR 436-115-0070 clarify which employers will be eligible to receive "education and consultation."

Response: OAR 436-115-0070 states the department may provide education and consultation to *applicants* and *grantees*. OAR 436-115-0005(1) defines "applicant" as an employer, employer group, employee group, educational association or educational institution which applies for a grant. OAR 436-115-0050 gives further clarification by providing eligibility criteria for worksite redesign assistance. The department will add "potential applicants" to OAR 436-115-1170(2) to clarify that those who believe they *may* be eligible can receive education and consultation regarding the Worksite Redesign Program.

Testimony: SAIF Corporation states funding priorities and quality review criteria should be clearly expressed in the rules. Applicants should have this information available to them at the time they make application.

Response: Although funding priorities and quality review criteria are policy issues, not rules issues, the department agrees that funding priorities and quality review criteria should be published and available to potential applicants. The department has provided and will continue to provide this information through

application materials and other media rather than through the Administrative Rules.

Testimony: SAIF Corporation states research grants should be awarded contingent upon the receipt of progress reports at prescribed intervals, so that the department can determine whether a viable product is likely to result.

Response: OAR 436-115-0110(2) states grant recipients shall make available to the department all records and materials necessary to monitor a grant. OAR 436-115-0110(4) states that upon approval of the worksite redesign grant application, the department will authorize funding, to include disbursement intervals, in accordance with the conditions agreed upon in the approved grant agreement. The department requires through the grant agreement that quarterly progress reports be received before quarterly grant disbursements are made.

Testimony: SAIF Corporation testifies against placing a cap on the dollar value of grants, letting each application be evaluated on its merits with consideration for the availability of funds.

Response: The department has not set a cap on the dollar value of grants through these Administrative Rules. Given funding limitations and the department's fiscal responsibility for the Worksite Redesign Program, the department reserves the right to make policy on maximum grant awards. The department will continue to make its policy known through program publications and staff consultations.

Testimony: SAIF Corporation requests clarification that an employer may receive more than one grant at the same time as long as the projects are different.

Response: This is a policy rather than a rule issue. Current policy is to allow more than one grant per applicant provided the applicant has adequate resources to complete more than one project, and subject to funding priorities. This and other policies will be communicated through application materials and other program publications.

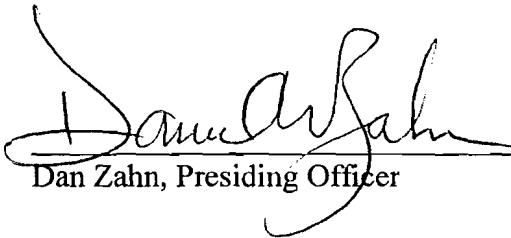
Testimony: The department testifies that OAR 436-115-0050(1) should read, "As part of the application, the applicant shall *have* documentation of the workplace problem..." (emphasis added). It is the intent of the department that applicants for product grants should not be required to "present" documentation of the workplace problem, since that documentation will already have been presented by the corresponding project grant recipient.

Response: The work "present" will be replaced with the word "have" in OAR 436-115-0050(1).

Having reviewed and considered all data, views and arguments presented, I hereby submit this report as a summary of statements given and exhibits received, and recommend the adoption of the amendments to the rules to correspond with the above responses to the testimony.

Dated this 27th day of May, 1997.

WORKERS' COMPENSATION DIVISION

A handwritten signature in cursive script, appearing to read "Dan Zahn", is written over a horizontal line. The signature is fluid and somewhat stylized.

Dan Zahn, Presiding Officer