

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Workers' Compensation Benefits Offset
Oregon Administrative Rules
Chapter 436, Division 100**

Effective January 1, 1998

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**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))
Chapter 436, Division 100, Workers')
Compensation Benefits Offset)

ORDER OF ADOPTION

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 100, Workers' Compensation Benefits Offset.

On December 11, 1996, the Workers' Compensation Division filed Notice of Periodic Review of Rules with the Secretary of State to amend rules governing Workers' Compensation Benefits Offset

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 January 1, 1997, Secretary of State's Administrative Rule Bulletin.

The hearing record was held open for written comment through 5:00 p. m. May 30, 1997. No substantive comments were received.

EXPLANATION: Amendments to these rules are "housekeeping" amendments only. There are no substantive changes.

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) 947-7810.**

Order of Adoption
OAR 436-100

IT IS THEREFORE ORDERED THAT:

- (1) OAR Chapter 436, Division 100, Workers' Compensation Benefits Offset, as set forth in Exhibit "A" attached hereto, is certified a true copy and hereby made part of this Order, are adopted effective January 1, 1998.
- (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 4th day of December 1997

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ Deborah Lincoln
Kerry Barnett, Director

Attachments

Distribution: WCD-ID, S, T, U, AT, CE, IA, LU, EG, CI

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 100**

436-100-0001 Authority for Rules

(1) These rules are promulgated under the director's authority contained in ORS 656.726 and 656.727.

Stat. Auth.: ORS 656.209, ORS 656.726 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0002 Purpose

The purpose of these rules is to establish requirements and procedures for the administration of offsetting permanent total disability benefits against social security disability benefits.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0003 Applicability of Rules

(1) These rules are effective January 1, 1998, to carry out the provisions of ORS 656.209 and ORS 656.727.

(2) These rules apply to:

(a) Those workers receiving awards for permanent total disability and are eligible for and receiving federal social security disability benefits; and

(b) Injured workers whose period of disability under the Social Security Administration began on or after June 1, 1965.

(3) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84
Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98

436-100-0005 Definitions

(1) "Authorization" means an order issued by the Workers' Compensation Division directing the paying agent to offset the worker's permanent total disability benefits by the amount specified in the order.

(2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a worker, who is entitled to receive payments under ORS 656.001 through ORS 656.794.

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(3) "Compliance Section" means the Compliance Section of the Workers' Compensation Division.

(4) "Department" means the Department of Consumer and Business Services.

(5) "Division" means the Workers' Compensation Division.

(6) "Federal Disability Benefit Limitation" means the amount determined pursuant to 42 USC 224(a) and Social Security Administration rules.

(7) "Offset" means a reduction of permanent total disability benefits based upon the amount of federal social security disability benefits received by a worker.

(8) "Paying agency or paying agent" means the self-insured employer or insurer paying benefits to the worker or beneficiaries.

(9) "Permanent total disability benefits" means compensation to an injured worker awarded permanent total disability compensation under ORS 656.206.

(10) "Worker" means any worker receiving permanent total disability benefits.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84
Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98

436-100-0006 Administration of Rules

For the purpose of administration of these rules, orders of the Workers' Compensation Division are deemed orders of the director.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.209 and ORS 656.726

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0008 Administrative Review

(1) Any worker aggrieved by any offset authorization of the division may apply to the Workers' Compensation Division for a reconsideration of that authorization prior to requesting a hearing.

(2) Any party aggrieved may request a hearing pursuant to the provisions of ORS 656.283.

Stat. Auth.: ORS 656.726 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84
Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98

436-100-0010 Criteria for Eligibility

(1) Permanent total disability benefits shall be offset by the workers' social security disability benefits. However, the total combined benefit, permanent total disability benefits plus

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social security disability benefits, shall not be offset to an amount less than the greater of:

- (a) The amount the worker would have received pursuant to ORS 656; or
- (b) The federal benefit limitation.

(2) Permanent total disability benefits shall not be paid by the paying agent in an amount greater than authorized by ORS Chapter 656.

(3) Offset of permanent total disability benefits shall be made by a paying agent only in an amount and as authorized by the director.

(4) Offset of permanent total disability benefits shall be authorized by the director only upon actual receipt of federal social security disability benefits by the injured worker.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0020 Requirements of Workers

(1) Workers entitled to receive permanent total disability benefits shall make application for federal social security disability benefits.

(2) Workers and eligible beneficiaries shall, upon department request, execute a release form authorizing the Social Security Administration to make disclosure to the department of such information regarding the injured workers as will enable the department to carry out the provisions of ORS 656.209 and these rules.

(3) Whenever there is a change in the federal social security beneficiary eligibility, the worker shall notify the Compliance Section.

(4) Upon request of the department, the worker may be required at any time to furnish additional information regarding social security disability benefits.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209 and ORS 656.727

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0030 Authorization of Offset; Effective Date

(1) Authorization issued by the department shall be directed to the paying agent with a copy to the injured worker.

(2) A paying agent making payment of permanent total disability benefits shall be entitled to social security disability offset only as authorized by the department.

(3) The department shall review the social security offset calculation when notified of a change in the status of a worker subject to social security offset. An amended authorization will be issued, if necessary.

(4) Whenever there is a change in eligibility status of the worker or any one of his/her beneficiaries receiving benefits for permanent total disability subject to offset, the paying agent

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shall notify the Compliance Section.

(5) The paying agent will, immediately upon the death of a worker, terminate payment of previously authorized permanent total disability benefits offset and commence payment of other compensation due under ORS Chapter 656, if any.

(6) The effective date of offset will be the effective date established in the authorization.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209 and ORS 656.727

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0040 Sanctions Against Worker for Failure to Cooperate With the Department

(1) Any worker entitled to receive permanent total disability benefits who fails to comply with these rules shall be subject to suspension of benefits until the worker has complied.

(2) If a worker fails to comply with these rules, a written demand shall be made upon him by personal service or registered mail. If the worker fails to comply within 20 days of receipt of the demand, the director may authorize suspension of benefits until the worker complies.

(3) An Order of Suspension of benefits shall continue in force from the date issued until the date the worker actually complies with these rules.

(4) No compensation shall become due or shall be payable during a period of suspension of benefits.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209 and ORS 656.727

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84