

EXHIBIT “A”
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS’ COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050
EMPLOYER/INSURER COVERAGE RESPONSIBILITY

Authority for Rules

436-050-0001 These rules are promulgated under the [D]director’s authority contained in ORS 656.407, 656.430, 656.455, 656.726, 656.850, 656.855, **and** 731.475 [and Oregon Laws 1989, c 762 Sect. 1a (House Bill 2320)].

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.017, 656.018, 656.021, 656.023, 656.027, 656.029, 656.031, 656.037, 656.039, 656.126, 656.128, 656.140, 656.403, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.440, 656.443, 656.447, 656.455, 656.614, 656.745, 656.750, 656.850, 656.855, and 731.475

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rules 436-51-001 and 436-51-201
Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76
(Temporary) as Rule 436-51-130, (436-55-060)
Amended 6/15/76 as WCB Admin. Order 3-1976, eff. 6/15/76 as Rule 436-51-130, (436-55-060)
Amended 4/20/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Purpose

436-050-0002 It is the purpose of the [D]director that under the provision of ORS 656.726 [(3)] **(4)** rules be established to ensure the requirements of ORS 656.017 are met. One of the general charges to the [D]director under the Workers’ Compensation Law is the [“]providing of compensation, regulation and enforcement in connection with ORS 656.001 to 656.794.[”] To meet that responsibility the [D]director has delegated to [Compliance] **the division the** responsibility of ensuring the requirements of the statutes, rules, and bulletins of the [Department] **director** are complied with as they relate to employer coverage.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.017

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76, as Rule 436-51-001
Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary as Rule 436-51-130)
Amended 6/15/76 as WCB Admin.. Order 3-1976
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

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Applicability of Rules

436-050-0003 (1) These rules are effective [January 23, 1998] **July 1, 2001**, to carry out the provisions of:

- (a) ORS 656.017 - Employer required to pay compensation and perform other [obligations and] duties.
 - (b) ORS 656.029 - Independent contractor status.
 - (c) ORS 656.126 - Coverage while temporarily in or out of state.
 - (d) ORS 656.407 - Qualifications of insured employers.
 - (e) ORS 656.419 - Guaranty contracts.
 - (f) ORS 656.423 - Cancellation of coverage by employer[; notice required; exception].
 - (g) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.
 - (h) ORS 656.430 - Certification of self-insured employer[; effective date].
 - (i) ORS 656.434 - Certification effective until canceled or revoked; revocation of certificate.
 - (j) ORS 656.443 - Procedure upon default by employer.
 - (k) ORS 656.447 - Sanctions against insurer for failure to comply with contracts, orders or rules.
 - (L) ORS 656.455 - Records location and inspection.
 - (m) ORS 656.745 - Civil penalties [y for inducing failure to report claims; failure to pay assessments; failure to comply with Director rules or orders; amount; procedure].
 - (n) ORS 656.850 and 656.855 - Worker-leasing companies.
 - (o) ORS 731.475 - Insurer's [I]nstate [L]ocation.
- (2) These rules apply to any person performing as a worker leasing company on or after May 1, 1994.
- (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 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76, as Rule 436-51-001
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Amended 6/15/76 as WCB Admin. Order 3-1976
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-008, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

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Definitions

436-050-0005 For the purpose of these rules unless the context requires otherwise:

(1) ["Assessments/Contributions" means moneys due the Department under ORS 656.506, ORS 656.532 and ORS 656.538.

(2) "Audited Financial Statement" means a financial statement audited by an outside accounting firm.

(3) **(2)** "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.

(4) **(3)** "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(5) **(4)** "Complete Records" means:

(a) written records that segregate and show specifically for each employer the amounts due from the employer and paid by the insurer or self-insured employer for premiums for insurance coverage, premium assessments, [assessment/contributions] and any other moneys due the [Department] **director**;

(b) written records of claims for compensation made under ORS chapter 656; and

(c) written records of guaranty contracts issued as required by ORS chapter 656.

(6) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) **(5)** "Controlling Person" means an officer or Director of a corporation offering worker-leasing services, a shareholder holding 10 percent or more of the voting stock of a corporation offering worker-leasing services, or a partner of a partnership offering worker-leasing services; or an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company offering worker-leasing services through the ownership of voting securities, by contract or otherwise.

(8) **(6)** "Days" means calendar days unless otherwise specified.

(9) **(7)** "Default" means failure of an employer, insurer or self-insured employer to pay the moneys due the [Department] **director** under ORS 656.506, [656.532, 656.538,] 656.612 and 656.614 at such intervals as the [D]**director** shall direct.

(10) **(8)** "Department" means the Department of Consumer and Business Services.

(11) **(9)** "Director" means the Director of the Department of Consumer and Business Services or the Director's delegate for the matter, **unless the context requires otherwise.**

(12) **(10)** "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services[, consisting of Compliance Section, Benefits Section, Dispute Resolution Section and Operations Section].

(13) **(11)** "Double Coverage" means more than one guaranty contract [in effect] **is on file** with the [Department] **director** for the same period of time.

(14) "Employment Division" means the Employment Division within the State of Oregon Department of Human Resources.

(15) **(12)** "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.

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[(16)] **(13)** "Governmental Subdivision" means cities, counties, special districts [created under] **defined in** ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.

[(17)] **(14)** "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

[(18)] **(15)** "Insurer" means a guaranty contract insurer.

[(19)] **(16)** "Leased Worker" means any worker provided by a worker-leasing company on other than a "temporary basis" as described in OAR 436-050-0420.

(17) "Person" means an individual, partnerships, corporations, joint ventures, limited liability companies, associations, government agencies, sole proprietorships, or other business entities allowed to do business in the State of Oregon.

[(20)] **(18)** "Premium Assessments" means moneys due the [Department] **director** under ORS 656.612 and 656.614.

[(21)] **(19)** "Process Claims" **and its variations** [means the receipt, review and payment of compensation of claims of a worker] **is the determination of compensability and management of compensation by an Oregon certified claims examiner. Although determining compensability and managing compensation must be done from within this state pursuant to ORS 731.475 and this definition, the act of making payment may be done from out-of-state as directed from the Oregon place of business.**

(20) "Reinstatement" means the continuation of workers' compensation insurance coverage without a gap under a guaranty contract.

[(22)] **(21)** "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

[(23)] **(22)** "Self-Insured Employer Group" means five (5) or more employers [in the same industry] certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.

[(24)] **(23)** "State" means the State of Oregon.

[(25)] **(24)** "Worker-Leasing Company" means a "person," **as described in section (17) of this rule,** who provides workers, by contract and for a fee, as established in ORS 656.850.

(25) "Written" and its variations means that which is expressed in writing, including electronic transmission.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary) as Rule 436-51-135
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Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 9/30/82 as WCD Admin. Order 10-1982, eff. 10/1/82
Amended 6/30/83 as WCD Admin. Order 1-1983, eff. 7/1/83
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-005, January 1, 1986.
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Administration of Rules

436-050-0006 Any orders issued by the Division in carrying out the [D]director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto, are considered orders of the [D]director.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rule 50-055
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Amended 12/12/85 as WCD Admin. Order 9-1986, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 27-1987, eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Administrative Review and Contested Cases

436-050-0008 (1) Any party as defined by ORS 656.005[(21)], including [SAIF Corporation as a designated processing agent] **an Assigned Claims Agent** pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS Chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the [D]director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the [person] **party** requesting said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within [twenty (20)] **sixty (60)** days of receipt by the aggrieved [person] **party** of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the administrator within said [twenty (20)] **sixty (60)** days of receipt of notice.

(3) Any party as described in section (1) aggrieved by an action or order of the [D]director or division pursuant to these rules, other than as described in section (2), where such action or order qualifies for review by hearing before the [D]director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(l). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within 30 days of the action or from the date of mailing or other service of an order.

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(b) The hearing shall be conducted by the [D]director or the [D]director's designee.

(c) Any order in a contested case issued by another person on behalf of the [D]director is a proposed order subject to revision by the [D]director. The [D]director may allow objections to the proposed order to be filed for the [D]director's consideration within 30 days of issuance of the proposed order.

(4) Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the [D]director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the [D]director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the [D]director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before the [D]director pursuant to ORS **Chapter** 183^[.310].

(e) Any request for a contested case hearing before the [D]director regarding a review determination made pursuant to this section must comply with the procedures provided in section (3) above.

Stat. Auth: ORS 656.704, 656.726(4), and 656.745

Stats. Implemented: ORS 656.254, 656.735, 656.745, and 656.750

Hist: Filed 12/19/75 as WCB Admin. Order 1-1975, eff. 1/1/76 as Rule 436-58-055
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Assessment of Civil Penalties

436-050-0010 [(1) The Director, through Compliance and pursuant to ORS 656.745 and 656.750, may assess a civil penalty against an employer, insurer, self-insured employer or self-insured employer group.

(2) A self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$250 a day for each day a violation continues, for failure to comply with ORS 656.455 or OAR 436-050-0175, 0210, 0220, or 0300 of these rules.

(3) An employer, insurer, self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$1,000 for violation of Oregon Administrative Rules 436-050-0060, 436-050-0070, 436-050-0080, 436-050-0100, 436-050-0110, 436-050-0150, 436-050-0170, 436-050-0175, 436-050-0195, 436-050-0200, 436-050-0230, 436-050-0260, 436-050-0290 and 436-050-0340.

(4) A worker-leasing company which does not comply with the requirements of OAR 436-050-0400, 436-050-0410, 436-050-0420, 436-050-0430, 436-050-0450 or 436-050-0455 may be assessed a civil penalty of up to \$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.

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(5) Notwithstanding section (3) of this rule, an insurer, self-insured employer or self-insured employer group who does not comply with the coverage requirements of the statutes, Rules and Orders of the Director relating thereto may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period.

(6) For the purpose of section (5), statutory coverage requirements include, but are not limited to, ORS 656.017, 656.031, 656.033, 656.039, 656.128, 656.135, 656.138, 656.140, 656.403, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, and 656.443.]

Stat. Auth: ORS 656.407, 656.430, 656.455, 656.704, 656.726(4), 656.850, and 656.855

Stats. Implemented: ORS 656.017, 656.031, 656.033, 656.039, 656.128, 656.135, 656.138, 656.140, 656.403, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.614, 656.745, 656.750, 656.850, 656.855, and 731.475

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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90

Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94

Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96

Repealed 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Suspension and Revocation of Authorization to Issue Guaranty Contracts

436-050-0015 (1) Pursuant to ORS 656.447, the [D]director may suspend or revoke the insurer's authority to issue guaranty contracts upon a determination that the insurer has failed to comply with its obligations under such contract or that it has failed to comply with the rules or orders of the [D]director.

(2) For the purpose of this rule:

(a) "Suspension" and its variations means a stopping by the [D]director of the insurer's authority to issue new guaranty contracts for a specified period of time.

(b) "Revocation" and its variations means a permanent revocation by the [D]director of an insurer's authority to issue guaranty contracts.

(c) "Show-cause hearing" means an informal meeting with the [D]director or designee in which the insurer shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the [D]director to suspend or revoke an insurer's authority to issue guaranty contracts.

(3) Suspension or revocation under this rule will not be made until the insurer has been given notice and the opportunity to be heard through a show-cause hearing before the [D]director and "show cause" why it should be permitted to continue to issue guaranty contracts.

(4) A show-cause hearing may be held at any time the [D]director finds that an insurer has failed to comply with its obligations under a guaranty contract or [that it] **has** failed to comply with rules or orders of the [D]director.

(5) Following a show-cause hearing, the [D]director may rescind the proposed order if the insurer establishes to the [D]director's satisfaction its ability and commitment to comply with ORS Chapter 656 and these rules.

(6) A suspension may be in effect for a period of up to 18 months. A suspended insurer may continue to serve existing accounts and renew any existing policy, unless the policy lapses or is canceled during the period of suspension.

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(7) After 12 months of the suspension has elapsed, the division may audit the performance of the insurer. If the insurer is in compliance, the administrator may request the [D]director to lift the suspension before the 18 months has elapsed. If the insurer is not in compliance, the administrator may request the [D]director revoke the insurer's authority to issue guaranty contracts.

(8) When an insurer's authority to issue guaranty contracts has been revoked, the insurer may serve an existing account only until the policy lapses, is canceled or until the next renewal date, whichever first occurs.

(9) After a revocation of an insurer's authority to issue guaranty contracts has been in effect for five years or longer, it may petition the [D]director to restore its authority by submitting a plan in the form prescribed by the [D]director, demonstrating its ability and commitment to comply with the workers' compensation law, these rules and orders of the [D]director.

(10) Appeal of proposed and final orders of suspension and revocation issued under this rule may be made as provided in OAR 436-050-0008.

(11) Any order of suspension or revocation issued by a referee or other person pursuant to ORS 656.447 and this rule is a preliminary order subject to revision by the [D]director.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.447

Hist: Filed 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Service of Order; Notice

436-050-0020 (1) When [Compliance] **the director** imposes a **civil** penalty, [under provisions of OAR 436-050-0010,] the Order, including a notice of the party's appeal rights, shall be served on the party.

(2) The Order shall be served by:

(a) Sending a copy of the Order to the party by certified mail return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure subsection (D)(3)(b)(i); or

(b) Delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2).

(3) Orders [of Compliance] issued pursuant to these rules shall contain [the following notice:] **a notice of rights pursuant to ORS 183.090 and 183.413 to 183.470.**

[“IF YOU DISAGREE WITH THIS ORDER, YOU ARE ENTITLED TO A HEARING AS PROVIDED BY ORS 656.704(2), OAR 436-050-0008, AND THE CONTESTED CASE PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT (ORS CHAPTER 183). IF YOU DESIRE A HEARING, YOU MUST NOTIFY THE ADMINISTRATOR IN WRITING WITHIN 20 DAYS OF THE DATE OF RECEIPT OF THIS NOTICE TO YOU.

YOUR REQUEST MUST BE SENT TO THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, WORKERS' COMPENSATION DIVISION, LABOR AND INDUSTRIES BUILDING, SALEM, OREGON 97310. YOU WILL BE NOTIFIED OF THE TIME AND PLACE OF HEARING BY THE WORKERS' COMPENSATION DIVISION. IF YOU REQUEST A HEARING, YOU WILL BE GIVEN INFORMATION ON PROCEDURES, RIGHT OF REPRESENTATION, AND THE RIGHTS OF PARTIES RELATING TO THE CONDUCT OF THE HEARING. IF YOU FAIL TO REQUEST A HEARING WITHIN 20 DAYS, THIS ORDER WILL BECOME FINAL BY OPERATION OF LAW AND THEREAFTER SHALL NOT BE SUBJECT TO REVIEW BY ANY AGENCY OR COURT.”]

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Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704, 656.726, and 656.740

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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff.12/26/90
Amended 6/22/01 WCD Admin. Order 01-054, eff. 7/1/01

Independent Contractors

436-050-0030

Stat. Auth: ORS 656.704 and 656.726(3)

Stats. Implemented: ORS 670.600

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Repealed 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96

Responsibility for Providing Coverage When a Contract Is Awarded

436-050-0040 [(1)(a) When a person awards a contract, that person is responsible for providing workers' compensation coverage on all individuals performing labor under the contract if the labor under the contract is a normal and customary part or process of that person's trade or business; unless

(A) The individuals performing labor under the contract are exempt as nonsubject workers under ORS 656.027;

(B) The person to whom the contract was awarded is registered pursuant to ORS 701.075 and is performing work described by ORS chapter 701; or

(C) At the time work commences, the person to whom the contract was awarded provides workers' compensation insurance for those individuals performing labor under the contract.

(b) As used in ORS 656.021 and in this section, "registered pursuant to ORS 701.075" means registered with the Construction Contractors Board.

(2) If a person awards a contract to a person who is exempt under ORS 656.027 to perform labor under the contract without the assistance of others and that person engages subject workers to meet the conditions of the contract, the person to whom the contract was awarded becomes a subject employer and must provide workers' compensation insurance for those subject workers. If such coverage is not provided, such person would be a noncomplying employer.

(3) **(1)** In the operation of ORS 656.029 [and notwithstanding sections (1) and (2) of this rule,] a subject employer who fails to comply with ORS 656.017 is a "noncomplying employer" as defined [in] **by** ORS [Chapter] **656.005**.

[(4)] **(2)** For the purposes of this rule:

[(a)] "Person" includes individuals, partnerships, corporations, joint ventures, limited liability companies, associations, governmental agencies and sole proprietorships.

(b) **(a)** "Assistance of others" means one or more individuals directly and immediately aiding in a common undertaking.

[(c)] **(b)** "Normal and customary part or process of the person's trade or business" refers to the day-to-day activities or operations which are necessary to successfully carry out the business or trade.

[(5) Notwithstanding sections (1) through (4) of this rule,] **(3) Pursuant to ORS 656.037**, a person contracting to pay remuneration for professional real estate activity as defined in ORS Chapter 696, to a qualified real estate agent is not an employer of the qualified real estate agent if:

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(a) The real estate agent has a real estate license;

(b) Substantially all of the remuneration (whether or not paid in cash) for services performed by the individual as a real estate licensee is directly related to sales or other output rather than to the number of hours worked;

(c) The services performed by the individual are performed pursuant to a written contract between the individual and the real estate broker, real estate appraiser or real estate organization for whom the services are performed; and

(d) The contract provides that the individual will not be treated as an employee with respect to the services for Oregon tax purposes.

[(6) If, at any time, the conditions of section (5) of this rule are not met, the real estate agent is a worker subject to ORS Chapter 656.]

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.029 and 656.037

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Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Non-Subject Workers

436-050-0045 (1) As used in ORS 656.027(1):

(a) "Private employment contract" means direct employment of the worker by the owner of the private home.

(b) As used in this rule, "owner of the private home" means any person who occupies and either owns, **leases** or rents the private home, or any person related by blood or marriage to that person, or any person who by direction of that person or by order of a court has become responsible for managing the household affairs of that person.

(2) As used in ORS 656.027(19):

(a) "A person performing foster parent duties" means any person certified by the [Children's Services Division] **State Office for Services to Children and Families** under ORS Chapter 418 as a foster parent, or any person employed by that person in the operation of a foster home as defined in ORS Chapter 418 and any rules promulgated thereunder.

(b) "A person performing adult foster care duties" means any person licensed by the Senior and Disabled Services Division or the Mental Health and Developmental Disability Services Division to operate an adult foster home, or any person employed by the operator to perform services of assistance to the residents of the adult foster home.

(3) As used in this rule, "adult foster home" means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

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Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.027

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)
Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92.
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Corporate Officers, Partnerships; Limited Liability Company Members; Subjectivity

436-050-0050 (1) [A corporate officer who is also a Director of the corporation and has a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officer, is a nonsubject worker pursuant to ORS 656.027(10).

(2) Notwithstanding section (1) of this rule, if the activities of the corporation involve the commercial harvest of timber or construction work regulated by the Construction Contractors Board (CCB) per ORS Chapter 701 or landscape work regulated by the State Landscape Contractors Board (LCB) per ORS 671.510 to 671.710 and where the corporation is registered with the CCB or licensed by the LCB, the following provisions apply:

(a) If all officers are qualified members of the same family, those officers who are directors of the corporation and who have a substantial ownership interest in the corporation may elect to be nonsubject workers regardless of the number of such officers.

(b) In all other circumstances, the maximum number of exempt corporate officers for the corporation shall be whichever is greater of the following:

(A) Two eligible officers; or

(B) One eligible officer for each 10 corporate employees.

(c) If a corporation has a variable or fluctuating number of employees, the number of corporate employees for purposes of subsection (2)(b)(B) of this rule is the average number of full time equivalent corporate employees on the last day of each calendar month of the preceding calendar year.

(d) **Pursuant to ORS 656.027, certain officers, limited liability company members, and partners may be nonsubject workers.** Each corporation, **limited liability company, and partnership** shall designate in writing **with its insurer** which of its eligible officers, **members, or partners** are to be exempt from coverage. Such designations shall **be made at the inception of a coverage policy and** remain in effect until [the corporation files a revised written designation, to be effective upon receipt] **a revised written designation is given to the insurer.** [An insured corporation shall file this designation with its insurer.] A self-insured [corporation] **entity** shall file this designation with the [Department] **director.** If an [corporation] **entity** does not file its initial designation, or [if a corporation is noncomplying] **is not in compliance pursuant to ORS 656.017 and 656.407,** then [the corporation's] **those** exempt [officers] **individuals** shall be determined in the order of the following [list]:

(a) The order of exempt officers for a corporation if not otherwise designated pursuant to this rule is:

(A) President;

(B) Secretary, if any;

(C) Vice President, if any;

(D) Secretary/Treasurer, if any;

(E) Treasurer, if any;

(F) All other Officers, if any.

(b) The order of exempt members of a limited liability company or partners of a partnership will fall first to the member or partner with the largest ownership interest then to the next largest ownership interest.

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[(e)] **(c)** If there is more than one person [in any of the offices listed in paragraph (2)(d)(A) through (F)] **or the ownership interest is the same in any of the offices listed in subsections (a) and (b)** of this rule, the sequence of those persons will be determined by whose birthday falls earlier in a year.

[(f)] **(2)** Noncomplying corporations, **noncomplying limited liability companies, or noncomplying partnerships**, regardless of the number of employees, are limited to two exempt officers, **members, or partners** to be determined in accordance with [subsection (2)(d)] **section (1)** of this rule.

[(g)] A corporation without workers' compensation coverage, of which every corporate officer is also a Director of the corporation, has a substantial ownership interest in the corporation, and is a qualifying member of the same family shall not be considered noncomplying. All such officers shall be presumed to have elected to be nonsubject workers.

(3) Notwithstanding section (1) of this rule, if the activities of the corporation are conducted on land that receives farm use tax assessment, all individuals identified as directors in the corporate bylaws are nonsubject workers pursuant to ORS 656.027(9), regardless of ownership interest, provided the directors are members of the same family, whether related by blood, marriage or adoption.

(4) If partnerships and limited liability companies (LLC) perform construction work regulated by the CCB per Chapter 701 or landscape work regulated by the State Landscape Contractors Board (LCB) per ORS 671.510 to 671.710 and are registered with the CCB or licensed by the LCB, the following provisions apply:

(a) If all partners or members are qualifying members of the same family, those partners or members who have a substantial ownership interest in the business may elect to be nonsubject workers regardless of the number of such partners or members.

(b) In all other circumstances, the maximum number of exempt partners or members shall be whichever is greater of the following:

(A) Two eligible partners or members; or

(B) One eligible partner or member for each 10 partnership or LLC employees.

(c) If the partnership or LLC has a variable or fluctuating number of employees, the number of employees for the purposes of paragraph (4)(b)(B) of this section is the average number of full time equivalent employees on the last day of each calendar month of the preceding calendar year.

(d) Each partnership or LLC shall designate in writing which of its eligible partners or members are to be exempt from coverage. Such designations shall remain in effect until the business entity files a revised written designation, to be effective upon receipt. An insured entity shall file this designation with their insurer. A self-insured entity shall file this designation with the Department. If the entity does not file its initial designation, or if the entity is noncomplying, then the entity's exempt partners or members shall be determined in the order of the following:

(A) Partner or member with the largest ownership interest

(B) Partner or member with the next largest ownership interest, and so on, in descending order.

(e) If there is more than one person with the same ownership interest per paragraph (4)(d)(A) through (B) of this section, the sequence of those persons will be determined by whose birthday falls earlier in a year.

(f) Noncomplying partnerships or LLCs, regardless of the number of employees, are limited to two exempt persons, to be determined in accordance with subsection (4)(d) of this rule.

(g) A partnership or LLC without workers' compensation coverage, of which every partner or member has a substantial ownership interest in the entity and is a qualifying member of the same family shall not be considered noncomplying. All such partners or members shall be presumed to have elected to be nonsubject workers.

(5) Notwithstanding sections (1), (2) and (4) of this rule, a corporation, partnership, or limited liability company with more than one member performs work subject to regulation by the CCB or the LCB but has failed to register with the CCB or obtain a license from the LCB, the respective corporate officers, partners, and members are deemed ineligible for exemption under ORS 656.027 while directly engaged in performing such work.

[(6)] **(3)** For purposes of [this rule] **clarifying terms used in ORS 656.027:**

(a) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(b) "Director" means a person elected or appointed to a corporation's board of directors in accordance with its articles of incorporation or bylaws.

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(c) "Eligible officer" means a corporate officer who is also a Director of the corporation and who has a substantial ownership interest in the corporation.

(d) "Eligible partner" or "eligible member" means a partner or member who has substantial ownership in the business entity.

(e) "Noncomplying" means an employing legal entity of subject workers which is in violation of ORS 656.017(1)[.];

(f) ["Qualifying member of the same family" means persons who are members of the same family and who each bear one of the following relationships to one of the others: parent, daughter, son, daughter-in-law, son-in-law, grandchild, spouse, sister or brother;

(g) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all owners or ten percent, whichever is less.

Stat. Auth: ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.027

Hist:

Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/18/90 as WCD Admin. Order 9-1990, eff. 7/1/90 (Temp)
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 10/4/91 as WCD Admin.. Order 8-1991, eff. 10/7/91 (Temp)
Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92
Amended 3/8/96 as WCD Admin. Order 96-057, eff 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Extraterritorial Coverage

436-050-0055 (1) [Employers from other states may bring their workers into Oregon to work without providing Oregon workers' compensation coverage if:

- (a) The employer has obtained workers' compensation insurance in that other state to cover those persons while working in Oregon;
- (b) The extraterritorial provisions of ORS 656.001 to 656.794 are recognized in that other state;
- (c) Oregon employers are likewise exempted from providing coverage in that other state; and
- (d) The worker is temporarily within this state doing work for the employer.

(2) Criteria to be used in determining whether a worker is [“]temporarily [with]in **or out of** [this] state[“] **pursuant to ORS 656.126 may** include[s], but [is] **are** not limited to:

- (a) The extent to which the worker's work [inside this] **within the** state is **of a temporary duration**;
- (b) The intent of the employer **in regard to the worker's employment status**;
- (c) The understanding of the worker **in regard to the employment status with the employer**;
- (d) The **permanent** location of the employer and its **permanent** facilities;
- (e) The circumstances **and directives** surrounding the worker's work assignment;
- (f) The state laws and regulations to which the employer is otherwise subject; [and]
- (g) The residence of the worker[.];
- (h) The extent to which the employer's contract in the state is of a temporary duration,**

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established by a beginning date and expected ending date of the employer's contract; and

(i) Other information relevant to the determination.

[(3)] **(2)** Within 30 days after coverage of an Oregon employer is effective, the insurer providing the coverage shall notify the employer in writing of the provisions of ORS 656.126 and [OAR 436-050-0055] **this rule.**

[(4) Notwithstanding sections (1) and (2) of this rule, all employers working under public contract are subject employers and must comply with ORS 656.017.]

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.126

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Guaranty Contract Filing Requirements; Evidence of Authority

436-050-0060 (1) Every guaranty contract issued by an insurer **pursuant to ORS 656.419** shall:

(a) [Be filed in accordance with the requirements of ORS 656.419:] **Be signed, in writing, and contain information pursuant to ORS 656.419(2);**

(b) Be submitted in a form and format prescribed by the [D] **director; and**

(c) Be completed in its entirety prior to submission to [Compliance] **the director.**

(2) [An insurer must submit a guaranty contract as prescribed by the Director pursuant to subsection (1)(b) of this rule, or submit another form as a guaranty contract if:

- (a) The form contains the same information as the Guaranty Contract;
- (b) The required information is legible and accessible for ease of data entry by Compliance;
- (c) The form has been certified by the insurer as a guaranty contract as set forth in ORS 656.419, and
- (d) The form has been approved by Compliance as a Guaranty Contract prior to submission.]

A Standard Industrial Classification Code (SIC) or North American Industry Classification System (NAIC) code will satisfy the required description of the occupation in which the employer is engaged or proposes to engage.

(3) [Every guaranty contract filed with Compliance pursuant to ORS 656.419 shall have a signature by an officer of the insurer or a designated representative of the insurer. The insurer shall inform Compliance of any such designated representative by filing with Compliance:

(a) A power of attorney with no monetary limit, signed by a corporate officer of the insurer, authorizing the attorney to sign guaranty contracts for the insurer; or

(b) A letter of authorization with no monetary limit, signed by a corporate officer of the insurer, designating the individual who is its representative and authorized to sign guaranty contracts for the insurer.

(4) The insurer shall inform Compliance within 10 days after a person having a power of attorney or letter of authorization has been changed.

(5) Incomplete, **illegible,** or incorrect guaranty contracts received by [Compliance] **the director** may not be considered filed.

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Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.419, 656.427

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 6/30/83 as WCD Admin. Order 1-1983, eff. 7/1/83
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Amended 12/12/85 as WCD Admin. Order 9-1985 eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 3/8/96 as WCD Admin. Order 96-057, eff 4/1/96
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Requalifying Required when Employer Entity Changes

436-050-0070 (1) An employer shall, if there is any change in the employing legal entity, requalify with [Compliance] **the director** in accordance with ORS 656.017. An employer shall within 10 days after a change in legal entity occurs, notify its insurer of such change. A change in legal entity includes, but is not limited to:

(a) When the employer is a sole proprietorship, partnership or corporation and changes to a sole proprietorship, partnership or corporation [.]; **or**

(b) When partners of a partnership establish another separate and distinct partnership.

(2) When a change in the legal entity of an insured employer occurs, the insurer shall, within 30 days, file a **written** guaranty contract with [Compliance] **the director** as evidence of the change.

(3) Even though there is no change in legal entity, if there is a disassociation or admission of a partner of a partnership, the employer shall within 10 days after the change, notify its insurer of such change. The insurer shall, within 30 days of being notified of the change, file an endorsement to the guaranty contract on file that sets forth the disassociation or admission of the partner and the effective date of such disassociation or admission.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.419

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/1/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/12/85 as WCD Admin. Order 9-1985 eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 1/9/98 as WCD Admin. Order 98-050, eff 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Personal Elections

436-050-0080 (1) When a person makes an election under ORS 656.039, 656.128 or 656.140, the insurer shall give evidence of the election, and of any cancellation of the election, by issuance of an endorsement to the insured employer's guaranty contract. The endorsement shall be issued within 30 days after the effective date of the election or within 10 days after cancellation of such an election.

(2) A personal election made under ORS 656.140 may be canceled by giving written notice to the insurer as provided by ORS 656.128.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.039, 656.128, and 656.140

Hist: Filed 12/19/75 as WCB Admin. Order 18-1976, eff. 1/1/76

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Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 12/12/86 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96

Notice to [Compliance] the Director of Change of Name or Address of Insured Employer

436-050-0090 [(1)] Notice to [Compliance] the director of change of name or address as required by ORS 656.419, shall be given by filing in a form and format, or manner as prescribed by the [D]director, a guaranty contract endorsement with [Compliance] the director as evidence of the change. A change of address includes:

[(a)] **(1)** A change in the employer's mailing address, and

[(b)] **(2)** A change in the employer's principal place of business in Oregon.

[(2)] The endorsement required by section (1) of this rule shall identify the type of address whether it is mailing, or principal place of business.]

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.419

Hist: Filed 12/19/76 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-115, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

436-050-0100 (1) [An insured employer may cancel coverage effective less than 30 days after written notice is received by an agent of the insurer by providing other coverage or by becoming a self-insured employer. A cancellation under this section shall be effective immediately upon the effective date of the other coverage or the effective date of certification as a self-insured employer so that there is no lapse of or double coverage.]

An employer may cancel coverage with an insurer pursuant to ORS 656.423. An employer's cancellation of coverage with an insurer does not terminate a guaranty contract. Liability of an insurer under a guaranty contract or surety bond to an employer under this chapter is terminated by an insurer taking action pursuant to ORS 656.427.

(2) A guaranty contract terminated pursuant to ORS 656.427 may be reinstated provided the insurer submits notice to [Compliance] the director stating that the termination notice is being rescinded **with no lapse in coverage**. Notice under this section shall be in writing and include the name of the insurer, legal name of the insured, insured's address, [WCD number,] **insured's telephone number, insurance policy number,** [date termination was requested and mail date of the termination letter] **and the insured employer's Federal Employer Identification Number (FEIN).**

(3) [Coverage under a guaranty contract issued by an insurer pursuant to ORS 656.419 continues until the guaranty contract is terminated pursuant to ORS 656.423 or 656.427.] **Pursuant to ORS 656.427(5), an employer may give notice to the insurer seeking continued coverage. The notice must be given before the effective date of the insurer guaranty contract termination and must be in writing. The notice must at least include a statement that other coverage has not been obtained and that the employer intends to become insured under the plan as established in ORS 656.730. Further application by the employer is not required. Pursuant to ORS 656.427(5), the insurer so notified must then insure continuing coverage and may take the additional steps to transfer the risk to the plan.**

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(4) [When there is a double coverage situation, the preceding insurer's responsibility will terminate with the effective date of a guaranty contract issued by the subsequent insurer.] **When there are two or more effective guaranty contracts on file with the director covering the same period, the insurer filing the most recent contract shall have all responsibility for processing claims of the employer for the period its guaranty contract is in effect.**

[(5) An insurer, whose coverage responsibility is terminated by the filing of a guaranty contract by a subsequent insurer, must file a notice of termination as required by ORS 656.423 or 656.427 within 30 days after becoming aware of the need to terminate the guaranty contract.]

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.423 and 656.427

Hist: Filed 12/9/75 as WCB Admin. Order 18-1975, eff. 1/1/76
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon

436-050-0110 (1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS Chapter 656 shall give [Compliance] **the director** notice of **the location, [and] mailing address, telephone number, and any other contact information** [of at least one location] in this state where the insurer processes claims and keeps **written** records of claims and guaranty contracts as required by [OAR 436-050-0110 to 436-050-0120.] **ORS 731.475. While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to guaranty contract information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of forty-eight (48) hours or less not including weekends or legal holidays would satisfy a reasonable expectation.**

(2) Notice under section (1) of this rule shall be filed with [Compliance] **the director** within 30 days after the insurer becomes authorized **and starts writing workers' compensation insurance policies for Oregon subject employers.**

(3) If an insurer elects to use [one or more] **a** service compan[ies]**y** to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer shall, **prior to its effective date,** file with [Compliance] **the division** a copy of the agreement between the insurer and each company, and shall give [Compliance] **the division** notice of the location and mailing address of each service company.

(4) [At least one authorized representative of the insurer, designated n accordance with OAR 436-050-0060 shall be located at the insurer's designated place(s) of business in the state.

(5) Compliance may approve up to a total of eight service companies or service company locations within this state where the insurer may process claims and maintain records.

(6) An insurer shall not enter into a service agreement contract with one of their insureds unless the insured has service contracts and is providing services to other insurers, self-insured employers or self-insured employer groups.

(7) For the purpose of this section, those activities conducted at [the] designated in-state location(s) and by the authorized representative(s) of the insurer shall include, but not be limited to:

(a) Processing claims **and responding to specific claims processing inquiries;**

(b) [Recording, filing and maintaining guaranty contracts, cancellations and endorsements thereto] **Keeping of records in a**

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written form, not necessarily original form, and making those records available upon request;

(c) [Resolving discrepancies relating to the filing of guaranty contracts and related documents] **Accommodating in-state periodic audits of the director;** and

(d) [Recording and remittance of premium assessments and assessments/contributions] **Providing copies of guaranty contracts, related information, and responding to inquiries to resolve coverage issues.**

[(8)] **(5)** If its place of business or that of a service company **elected in lieu of an in-state place of business** is changed, the insurer shall notify [Compliance] **the director** of the new location, [and] mailing address, **telephone number, and any other contact information** of the place of business **at least 30 days** prior to the effective date of the change. [The place of business an insurer is required to maintain in Oregon shall be maintained in this state for as long as the insurer is required to keep records in this state.]

[(9)] **(6)** When an insurer with respect to any portion of its business changes service companies, changes from self-administration to a service company or from a service company to self-administration, the insurer shall notify [Compliance] **the director** of which claims, if any, will be transferred at least 10 days prior to the date of transfer. Notice to [Compliance] **the director** shall [be in a form and format as prescribed by the Director] **include:**

(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

[(10)] **(7)** Records every insurer is required to keep in this state include all the **written** records of the insurer that show its insured employers have complied with ORS 656.017, [656.506, 656.538 and 656.612] including but not limited to the records described by OAR 436-050-0120.

[(11) Notwithstanding section (1) of this rule, Compliance may approve up to two additional locations within this state where the insurer itself may process claims, if the insurer can show:

- (a) That such additional locations will result in improved claims processing performance of the insurer; and
- (b) That the auditing functions of Compliance can be met without unnecessary expense to the Department.

(12) Approval of additional locations as provided in section (11) of this rule will be reviewed annually. If the insurer's claims processing performance has not remained at or above the levels as described in OAR 436 Division 060, such approval shall be withdrawn.

(13) An insurer shall not make payment of compensation to a worker from a location outside Oregon.]

Stat. Auth: ORS 731.475, 656.704, and 656.726(4)

Stats. Implemented: ORS 731.475

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/18/87 as WCD Admin. Order 91987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 51989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Records Insurers Must Keep in Oregon; Removal and Disposition

436-050-0120 (1) The records of claims for compensation that each insurer is required to keep

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in this state include:

(a) [All letters, reports and other forms of written information relating to every claim] **Written records used and relied upon in processing claims; and**

(b) A **written** record of all payments made as a result of any claim.

(2) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(3) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(4) When a denied claim is found to be compensable, the records of such claim are thereafter subject to section (3) of this rule.

(5) Claims records [for denied claims and records of claims for nondisabling compensable injuries may be disposed of or destroyed whenever sections (2) to (4) of this rule permit their removal from this state. Claim records for disabling compensable injuries shall not be disposed of or destroyed, however, until at least one year after either aggravation rights under ORS 656.273 have expired or the final payment of compensation has been made, whichever is the last to occur] **may be destroyed when all potential for benefits to the injured worker is gone.**

(6) The records relating to guaranty contracts that insurers are required to keep in the state include:

(a) A [copy] **written record** of each guaranty contract, **termination**, cancellation[s], **reinstatement**, and endorsement[s] issued under the Workers' Compensation Law;

(b) [Complete] **Written** records of premiums due and premiums collected by the insurer from its insured employers as a result of coverage issued under the Workers' Compensation Law; and

(c) [Complete] **Written** records of all [employer assessments, employee contributions, and other] money due and all such money collected from insured employers for the [Department] **director** and required to be remitted to the [Department] **director**.

(7) [Records regarding any guaranty contract may, subject to section (9) of this rule, be removed from this state at the end of one full calendar year after the calendar year in which the guaranty contract terminates or after all remittance due to the Department have been made, whichever is the last to occur.

(8) If all remittances have been made, [such] **guaranty contract** records may be disposed of after the end of three full calendar years following the calendar year in which the guaranty contract terminates.

[(9) An insurer shall provide records which have been removed from this state to Compliance within a reasonable time after requested.]

Stat. Auth: ORS 731.475, 656.704, and 656.726(4)

Stats. Implemented: ORS 731.475

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rules 436-51-210 and 436-51-215
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-215, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

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Qualifications of a Self-Insured Employer

436-050-0150 (1) An employer shall qualify as a self-insured employer by:

- (a) Establishing proof that the employer has an adequate staff qualified to process claims;
- (b) Establishing proof of the financial ability to make certain the prompt payment of all compensation and other payments due under ORS 656; **and**
- (c) Obtaining excess insurance coverage in the amounts approved by the [Department] **director**.

(2) An employer shall establish proof of an adequate staff qualified to process claims by:

(a) Employing and retaining at each claims processing location, at least one person that is **qualified in accordance with OAR 436-055-0070 and is** actually involved in the claims processing function [that is certified in accordance with OAR 436-055-0070]; OR

(b) Contracting the services of one or more service companies that employ at each claims processing location, at least one person **qualified in accordance with OAR 436-055-0070 and** that is actually involved in the self-insured employer's claims processing [that is certified in accordance with OAR 436-055-0070].

(3) An employer shall establish proof of financial ability by depositing, in a depository, designated by the [D] **director**, money, government securities or other surety the [D] **director** may determine acceptable and in an amount as determined in accordance with OAR 436-050-0180.

(4) Failure of a certified self-insured employer to maintain the qualifications required in this section shall result in revocation of the employers self-insured certification. The employer will be given 30 days' written notice of the intent to revoke the self-insured certification [which will] **to** be effective 30 days from the date of receipt of the revocation notice. If the employer complies with the qualification requirements within the 30-day period, the revocation is canceled and the certification remains in effect.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Applying for Certification as a Self-Insured Employer

436-050-0160 (1) An employer applying for certification as a self-insured employer must submit the following information:

(a) An application in a form and format prescribed by the [D] **director** to become a self-insured employer;

(b) Proof of the employer's claims processing ability **employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070;**

(c) The employer's audited financial statements or audited annual reports for the last three

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fiscal or calendar years. If the audited financial statements of a parent company are provided in lieu of statements for the employer, [Compliance] **the director** will not authorize the individual employer to be self-insured under its own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured employer or to separately insure the employer. In the context of this section, a parent company is a legal entity which owns a majority interest in the employer, or owns a majority interest in another entity or succession of entities which owns a majority interest in the employer;

(d) The employer's most recently promulgated experience rating modification worksheet and supporting documentation. Applicants with prior Oregon experience who do not submit this data will be assigned a 1.50 experience rating modification pending receipt of the data. All those without prior Oregon experience will be assigned a 1.00 experience rating modification;

(e) The type, retention and limitation levels of excess insurance the employer is planning to obtain as required by OAR 436-050-0170;

(f) If applicable, a service agreement between the employer and each service company that has been signed by both parties. The agreement shall also contain the location, [and] mailing address, **telephone number, and any other contact information** of each service company;

(g) [The type of surety deposit the employer wishes to provide, with appropriate justification] **Evidence from a surety bond company that they will issue a surety bond for the employer, as Principal, and the Workers' Compensation Division, as Oblige; and**

(h) Evidence of an occupational safety and health loss control program in accordance with OAR 437-001 as required by ORS 656.430(10).

(2) Within 30 days of receipt of all information required in section (1) of this rule, [Compliance] **the director** will review the application and notify the employer that the request for certification as a self-insured employer is denied and the reason therefore; or, that the employer is qualified as a self-insured employer. If the employer qualifies as a self-insured employer, the notice shall include:

(a) The amount of surety deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance[.]; or

(c) The type, retention and limitation levels of excess insurance required.

(3) The certification of self-insurance will be issued upon receipt of the surety deposit, the appropriate excess insurance binder and if applicable, a service agreement between the employer and service company that has been signed by both parties.

(4) Unless a date is specified by the applicant, the effective date of certification will be the first day of the calendar quarter following the date the requirements of section (3) of this rule are met.

(5) Notwithstanding subsection (1)(c) of this rule, an employer making application may submit certified financial statements in lieu of audited financial statements or annual reports if the employer:

(a) Deposits surety in the form of a surety bond approved by [Compliance,] **the director**; or

(b) Increases the surety deposit, in a form approved by [Compliance,] **the director** by \$100,000 over the amount as determined pursuant to OAR 436-050-0180.

Stat. Auth: ORS 656.430, 656.704, and 656.726(4)

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Stats. Implemented: ORS 656.430

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-310, January 1, 1986
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Excess Insurance Requirements

436-050-0170 (1) A self-insured employer must have excess insurance coverage appropriate for the employer's potential liability under ORS 656.001 to 656.990 with an insurer authorized to do business in the state or with any other insurer from whom such insurance can be obtained pursuant to ORS 744.305 to 744.405. The policy providing such coverage and any endorsements thereto must be filed with [Compliance] **the director** not later than 30 days after the date the coverage is effective.

(2) The excess insurance:

(a) Must include a provision for reimbursement to the [Department] **director** of all expenses paid by the [Department] **director** on behalf of the employer pursuant to [section (1) or] ORS 656.614 and [ORS] 656.443 in the same manner as if the [Department] **director** were the insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer; **and**

(b) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled.

(3) When an excess insurance policy is canceled by the excess insurer or the employer, copy of such notice shall be filed with the [Department] **director** 30 days prior to the effective date of cancellation.

(4) The employer may obtain specific excess, aggregate, umbrella insurance or any combination thereof.

(5) The retention and limitation amount of the excess insurance required may be increased from time to time by the [D]**director**. Those items considered in determining and approving the retention and limitation levels of the excess insurance will be the employer's:

(a) Financial status:

(b) Risk and exposure; **and**

(c) Claim history.

(6) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with [a Department] **an** order **of the director** to the employer to increase the policy limitation or amounts and limits of liability of the excess insurance.

(7) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer shall not transfer claims to the excess insurer(s) for processing.

(8) If a self-insured employer fails to comply with the requirements of this section, the employer's certification as a self-insured will be revoked. The employer will be given written notice of

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such revocation which will be effective 30 days from receipt of such notice. If the required excess insurance is obtained within the 30 days, the revocation is canceled and certification remains in effect.

Stat. Auth: ORS 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.430

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Annual Reporting Requirements

436-050-0175 (1) [In order t] **T**o determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, [annually] a self-insured employer shall **annually** file, within 120 days of the employer's fiscal year end, an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. All financial statements and annual financial reports filed, as required by this section, shall be retained by the [Division] **director** for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true, accurate and presents the employer's financial condition and results of operations as of the date of the statement, if the employer also:

(a) Deposits and maintains the surety deposit in the form of a surety bond approved by [Compliance,] **the director**; or

(b) Increases the surety deposit, in a form approved by [Compliance] **the director**, by \$100,000 over the amount as determined pursuant to OAR 436-050-0180.

(2) [In order t] **T**o ensure continuity of coverage, each self-insured employer shall submit an annual endorsement to their application for self-insurance in the form prescribed by the [D]director. The endorsement shall be filed by March 1 of each year.

(3) Notwithstanding subsections (1)(a) and (b) of this rule or [section (5) of] OAR 436-050-0160**(5)**, [Compliance] **the director** may require an employer to submit an audited financial statement.

(4) The self-insured employer shall report [the] claim loss data necessary **by March 1 of each year** for the purposes of experience rating modification, retrospective rating calculations and determining deposits [as requested by the Department by April 1, 1990, and by March 1, of each successive year].

(a) The [D]director will, by bulletin, prescribe guidelines for self-insured employers and their authorized representatives to use in providing the required data.

(b) Each self-insured city or county that is exempted from the security deposit requirements in accordance with ORS 656.407(3) and OAR 436-050-0185 shall, in addition to the above, provide the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

(5) If a self-insured employer fails to comply with the requirements of sections (1), (2), or (4) of this rule, the [D]director may impose any or all of the following sanctions:

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- (a) Require the self-insured employer to increase their deposit and premium assessments by 25%;
 - (b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;
 - (c) Assess civil penalties for up to \$250 per day that the information is not provided beyond the deadline; or
 - (d) Revoke the employer's certification as a self-insured.
- (6) [In order t] **To** ensure each self-insured's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the [Compliance Section] **director** will perform routine test audits. If a self-insured's total claims values are found to be 10 percent or more below the [Department] **director**'s determined values, the current experience rating will be recalculated using the [Department] **director**'s determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth: ORS 656.407, 656.430, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temp)
Amended 01/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Determination of Amount of Self-Insured Employer's Deposit; Effective Date of Order to Increase Deposit

436-050-0180 (1) The deposit a self-insured employer is required by ORS 656.407 to maintain with the [Department] **director** shall be [in] an amount not less than the greater of:

- (a) \$100,000; [or]
- (b) Future claim liability, including a claims processing administrative cost plus the anticipated assessments payable to the [Department] **director** for the employer's next fiscal year; or
- (c) The annual incurred losses for the self-insured's last fiscal year, including a claims processing administrative cost plus anticipated assessments payable to the [Department] **director** for the employer's next fiscal year.

(2) Notwithstanding section (1) of this rule, if the employer is applying for self-insurance, the amount of the deposit shall not be less than the greater of:

(a) The anticipated assessments payable to the [Department] **director** for the employer's next fiscal year; plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer's Oregon operations for the employer's next fiscal year; or

(b) \$300,000 plus \$30,000 additional for each \$100,000 the employer's net worth is below \$2 million.

(3) In determining the amount of deposit [Compliance] **the director** may also take into consideration:

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- (a) Financial ability of the employer to pay compensation and other payments due;
- (b) Employer's probable continuity of operation;
- (c) Retention[']s and limitation levels of the employer's excess insurance[.]; and
- (d) Balance of the Self-Insured Employers Adjustment Reserve.

(4) Assessments payable to the [Department] **director** referred to in this section include moneys and assessments due pursuant to ORS 656.506, [656.532, 656.538.] 656.612, **and** 656.614[, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600)].

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with **an** [Department] order **of the director** to the employer to increase the amount of its deposit.

(6) "Claims processing administrative cost" shall be determined by developing a percentage rate to be applied against the employer's "unpaid losses." The rate will be based upon the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by [the] SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year. The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:

- (a) "Loss Expenses Unpaid" for losses incurred in the latest eight years, divided by
- (b) "Losses Unpaid" for losses incurred in the latest eight years.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407

Hist: Filed 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary) as Rule 436-51-140
Amended 6/15/76 as WCB Admin. Order 3-1976, eff. 6/15/76 as Rule 436-51-140
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
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Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Deposit Exemption for Self-Insured Cities and Counties, Qualifications, Application Procedures, Conditions and Requirements, Revocation and Requalification

436-050-0185 (1) A self-insured city or county may make application to be exempt from the security deposit requirements of ORS 656.407(2). Pursuant to ORS 656.407(3), the requirements to qualify for exemption are as follows:

(a) The city or county must be a certified self-insured employer, not a member of a self-insured employer group, in compliance with ORS 656.407(2) and OAR 436-050-0180 as an independently self-insured employer for the three consecutive years immediately prior to making application for the exemption[.]; **and**

(b) The city or county [has] **must have** in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the [D]**director** pursuant to ORS Chapter 656. The workers' compensation loss reserve account shall also be dedicated to and expended only for payment of compensation and amounts due the [D]**director** by the city or

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county under ORS Chapter 656.

(2) A written application requesting exemption from [subsection (2) of] ORS 656.407(2) shall be submitted to [Compliance] **the director** no later than 45 days prior to the date the exemption is desired to become effective. The application shall include the following supporting documentation for review and approval:

(a) A copy of the city's or county's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740 that identifies the actuarially sound funded amount in the dedicated workers' compensation loss reserve if not previously filed as required by OAR 436-050-0175(1)[.];

(b) A copy of the city's or county's current fiscal year's approved budget that states the budgeted amount for the funded workers' compensation loss reserve account[.];

(c) A resolution or ordinance passed by the city's or county's governing body that establishes an actuarially sound and adequately funded workers' compensation loss reserve account that dedicates the workers' compensation loss reserve account to and limits expenditures to only the payment of compensation and amounts due the [D]**director** under ORS Chapter 656. The resolution shall also include the [D]**director's** first lien and priority rights to the full amount of the workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS Chapter 656[.]; **and**

(d) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, the procedures, methods, and criteria used in the process of determining the amount funded in their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported. The statement shall include the city's or county's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.

(3) Within 45 days of receipt of all information required in section (2) of this rule, [Compliance] **the director** will review the application and supporting documentation and notify the city or county that the request for exemption under ORS 656.407(3) is approved or denied.

(a) If denied, the notice will provide the reasons for the denial, any requirements for reconsideration and the right to [A]**administrative** [R]**review** as provided by OAR 436-050-0008.

(b) If approved, the notice shall include:

(A) The confirmation of the effective date of exemption[.];

(B) Authorization for cancellation of any surety bond held as security pursuant to ORS 656.407(2) and OAR 436-050-0180[.]; **and**

(C) Procedures for release of any [G]**government** [S]**securities** or [T]**time** [D]**deposits** held as security pursuant to ORS 656.407(2) and OAR 436-050-0180.

(4) Probable cause to believe the workers' compensation loss reserve account is not actuarially sound includes but is not limited to: The annual audited financial statement under ORS 297.405 to 297.740 not containing a statement by the auditor that the workers' compensation loss reserve account is adequately funded, or containing a disclaimer regarding the auditor's qualifications or ability to determine adequacy of the loss reserve account.

(5) A city or county that has been exempted from [subsection (2) of] ORS 656.407(2) and desires to

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terminate its self-insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve shall:

(a) Submit written request to [Compliance] **the director** at least 60 days prior to: the desired effective date the self-insured certification is requested to be terminated; or the effective date that the qualifying workers' compensation loss reserve account is to be discontinued[.];

(b) If the self-insured certification is to be terminated, the request for termination shall comply with the requirements of OAR 436-050-0200. Prior to the effective date of termination the city or county shall provide surety, as required by the [D]**director**, in an amount determined pursuant to OAR 436-050-0180 and ORS 656.443[.]; **and**

(c) If the city or county desires to remain self-insured the city or county shall requalify for self-insurance certification by depositing prior to the date the qualifying workers' compensation loss reserve account is to be discontinued, such surety as required by the [D]**director** pursuant to ORS 656.407(2) and OAR 436-050-0180. Pursuant to ORS 656.407(3)(e) failure to deposit the required surety with [Compliance] **the director** prior to the date of discontinuance of the qualifying workers' compensation loss reserve account shall cause the city's or county's self-insurance certification to be automatically revoked as of that date.

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)

Amended 01/10/92 as WCD Admin. Order 2-1992 eff. 2/1/92

Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Using Self-Insured Employers Surety Deposit/Self-Insured Employers Adjustment Reserve

436-050-0190 (1) In the event a self-insured employer fails to or is unable to make all payments due under ORS Chapter 656, [Compliance] **the director** shall, on behalf of the employer, assure continued payments in accordance with ORS 656.407, 656.443 and 656.614 and in such a manner as to ensure minimum delay in the processing of injured workers' claims.

(2) If a self-insured employer defaults and is being serviced by one or more service companies, [Compliance] **the director** will, on behalf of the employer, designate those service companies to continue processing claims in accordance with the contracts in effect. [Prior to the time the contract expires, bids will be solicited from interested insurers and service companies to process the claims of the self-insured employer. Upon receipt of all bids, Compliance will negotiate a contract for the administration of the claims.] **At least 90 days prior to the time the contract expires, the service company can submit a proposal to continue processing the claims. The director will consider such proposal along with other options which may include referral of the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.**

(3) If a self-insured employer defaults and is self-administering, [Compliance] **the director** shall, on behalf of the employer, negotiate to have the employer's claims processed [for an interim period not to exceed six months] **or may refer the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.** [Thereafter, responsibility for administering the claims will be determined in the same manner as prescribed in section (2) of this rule.]

Stat. Auth: ORS 656.407, 656.704, and 656.726(4)

Stats. Implemented: ORS 656.407, 656.443, and 656.614

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82

Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83

Renumbered from OAR 436-51-322, January 1, 1986

Amended 12/12/85 as WCD Admin. Order 9-1985 eff. 1/1/86

Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88

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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Notification Required when Self-Insured Entity Changes

436-050-0195 (1) If there is any change in the legal entity, [involving the additions or deletions of entities] **changes in addresses, telephone numbers, and points of contact,** or ownership changes, a self-insured employer shall notify [Compliance] **the director** within 30 days after the change occurs.

(2) [Notification is to be made in narrative form on the letterhead of the self-insured,] **A self-insured employer shall submit requests to add or delete entities under its self-insured certification in the form and format, or manner, as prescribed by the director, and** signed by an officer of the company.

(3) [Compliance] **The director** will determine, based on the information provided, the effect of the change on the deposit required and whether the entities can be combined for experience rating purposes.

(4) Failure to provide notification as required by this section may result in assessment of penalties and/or self-insurance certification revocation.

Stat. Auth: ORS 656.407, ORS 656.430, ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.407 and ORS 656.430

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90

Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Self-Insured Certification Cancellation; Revocation

436-050-0200 (1) A certification to a self-insurer issued by [Compliance] **the director** remains in effect until:

- (a) Revoked as provided by OAR 436-050-0150 through 436-050-0230 and ORS 656.440; or
- (b) Canceled by the employer with the approval of [Compliance] **the director**.

(2) If a self-insured employer wishes to cancel certification as a self-insured, the employer shall make written request to [Compliance] **the director**. Such a request shall be submitted 60 days prior to the desired date of cancellation and include:

(a) What arrangements have been made to comply with ORS 656.017 [and with whom] if the employer [will remain an employer] **continues to have one or more subject workers;**

(b) What arrangements have been made to process present and future claims for which the employer is responsible;

(c) A statement of all present and future claims liabilities for all liabilities incurred during the period of self-insurance; and

(d) Any reports and/or moneys due the [D]irector pursuant to ORS 656.506, [656.532, 656.538,] 656.612, **and** 656.614[, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600)].

(3) The certification of a self-insured employer may be revoked if:

(a) The employer fails to comply with ORS 656.407 or 656.430 and the rules adopted pursuant thereto; or

(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.

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(4) Except as provided in OAR 436-050-0170 [(10)] **(8)**, notice of certificate revocation will be issued in accordance with the provision of ORS 656.440.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.434 and 656.440

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-325, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985 eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Notice of Self-Insurer's Personal Elections

436-050-0205 When a person makes an election under ORS 656.039, 656.128 or 656.140, the self-insured shall notify [Compliance] **the director** in [writing] **written form** of the election and of any cancellation of the election within 30 days of the effective date.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.039, 656.128 and 656.140

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Notice of Self-Insurer's Place of Business in State; Records Self-Insured Must Keep in Oregon

436-050-0210 (1) Every employer certified as a self-insured employer shall [maintain at least one place of business in this state where the employer processes claims, keeps records of claims] **give the director notice of location, mailing address, telephone number, and any other contact information of at least one location in this state where claims will be processed and claim records kept as well as** [and] other records as required by [OAR 436-050-0210 to] **this rule and OAR 436-050-0220**. The employer shall give notice of the location, [and] mailing address, **telephone number, and any other contact information** upon application for certification.

(2) **With the approval of the director**, [If] a self-insured employer **may** use[s] one or more service companies as authorized by [subsection (1) of] ORS 656.455 instead of establishing its own place of business in this state[.]. **To obtain approval or to change or add service locations**, the employer shall file with [Compliance] **the director** a copy of the agreement entered into between the employer and each company, and shall give [Compliance] **the director** notice of the location, [and] mailing address, **telephone number, and any other contact information** of each service company.

(3) If its place of business, or that of a service company, is changed, the employer shall notify [Compliance] **the director** of the new location, [and the] mailing address, **telephone number, and any other contact information** [of the place of business] 30 days prior to the effective date of the change.

(4) When a self-insured employer changes service companies, changes from self-administration to a service company or from a service company to self-administration, the employer shall notify [Compliance] **the director** of which claims, if any, will be transferred at least 10 days prior to the date of transfer. Notice to [Compliance] **the director** shall [be in a form and format as prescribed by the Director.] **include:**

(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should

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also include the employer's WCD number and WCD's claim number, if known.

(5) **Written** [R]records every self-insured employer is required to keep in this state include, but are not limited to, the records described by OAR 436-050-0220.

(6) Notwithstanding section (1) of this rule, [Compliance] **the director** may approve up to two additional claims processing locations, if the self-insured employer can show:

(a) That meeting the requirements of section (1) of this rule will impose a financial or operational hardship on the employer;

(b) That such additional locations will result in improved claims processing performance of the employer; and

(c) That the auditing functions of [Compliance] **the director** can be met without unnecessary expense to the [Department] **director**.

(7) [Approval of additional locations as provided in section (6) of this rule will be reviewed annually.] **If, upon review of** [the] **a self-insured** employer's claims processing performance, **the performance** has not remained at the levels as described in OAR 436 [Division]-060, [such] approval **for additional locations provided in section (6)** shall be withdrawn.

(8) Notwithstanding section (1) of this rule, a self-insured employer may, with the prior approval of [Compliance] **the director**, make compensation payments from a single location other than the designated claims processing location. Approval of such a location [shall] **may** be revoked if at any time:

(a) Timeliness of compensation payment falls below the minimum standards as established in OAR 436-060;

(b) [Copies of compensation checks are found not to be in the claim file at the authorized claims processing location] **Written record of compensation payments is not available;** or

(c) There is not sufficient **written** documentation [in the claim file] to support the issuance of a check for compensation.

(9) Notwithstanding section (1) of this rule, a self-insured employer may, with prior approval of [Compliance] **the director**, have one additional location, in or out of state for maintaining payroll records pertaining to premium assessments and assessment/contributions.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
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Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

436-050-0220 (1) The **written** records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, [656.532, 656.538,] 656.612, 656.614, **and** 656.622[, and Oregon Laws

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1981, c 535 Sect. 15 (House Bill 2600)] include:

- (a) A record of payroll by National Council on Compensation Insurance classification; and
 - (b) Complete records of all assessments, employer and employee contributions, and all such money due the [Department] **director**.
- (2) The self-insured employer must maintain at a place of business in this state, those **written** records relating to their safety and health program as required by ORS 656.430(10) and in accordance with OAR 437-001.

(3) The records of claims for compensation that each self-insured employer is required to keep in this state include, but are not limited to:

(a) [All letters, reports and other forms of written information relating to every claim.] **Written records used and relied upon in processing claims; and**

(b) A **written** record of all payments made as a result of any claim.

[(c) A summary sheet available at audit in each claim showing all payments made, separated into vocational assistance, disability, and medical payments with cumulative totals. The record of disability payments should be limited to statutory benefits and not include any additional employer obligations. Expenses shall not be included in any of the three columns required on the summary sheet. "Expenses" are defined in National Council on Compensation Insurance, Workers' Compensation Statistical Plan, Part IV. The Department shall, by bulletin, prescribe the method and manner of determining and recording vocational assistance costs chargeable as a claims cost. For the purpose of this subsection "Statutory Benefits" means any benefits payable to or on behalf of the injured worker in accordance with the law in effect at the time of the injury.]

(4) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(5) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(6) Notwithstanding sections (4) and (5) of this rule, if administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until after either the review is concluded and the time for an appeal from such review has expired or at least one year after final payment of compensation has been made, whichever is the last to occur.

(7) During administrative or judicial review, if a denied claim is found to be compensable the records of such claim are thereafter subject to section (5) of this rule.

(8) [Claims records for denied claims and records of claims for nondisabling compensable injuries may be disposed of or destroyed whenever sections (4) to (6) of this rule permit their removal from this state. Claims records for disabling compensable injuries shall not be disposed of or destroyed, however, until at least one year after either aggravation rights under ORS 656.273 have expired or the final payment of compensation has been made, whichever is the last to occur.] **Claim records may be destroyed when all potential for benefits to the injured worker is gone.**

(9) Records retained as required by section (1) of this rule may be removed from the state or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

Hist: Filed 4/2/80 as WCD Admin. Order 3-1980 eff. 4/2/80
Amended 2/10/82 as WCD Admin.. Order 4-1982, eff. 2/15/82
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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

**Out-of-State Recordkeeping and Claims Processing by Self-Insured Employer;
Conditions and Procedure for Permit; Revocation**

436-050-0230 (1) Notwithstanding OAR 436-050-0220, if [if] a self-insured employer wishes to keep the claims records [described by OAR 436-050-0220] and [to] process claims[,] at a location outside this state, the employer [shall] **may** apply to [Compliance] **the director** for permission to do so. The application shall contain the reasons for the request and the **location, mailing address, telephone number, and any other contact information** where the records will be kept and the claims processed. Upon receipt, [Compliance] **the director** will review the application and notify the employer that the request has been denied and the reason therefor; or, that the employer will be allowed to process claims from outside this state.

(2) [Compliance] **The director** may grant permission to the self-insured employer unless the employer has committed acts or engaged in a course of conduct that would be grounds for revocation of permission or that are contrary to any of the provisions of section (3) of this rule.

(3) A self-insured employer that keeps claims records and processes claims at a location outside this state shall:

(a) Process claims in an accurate and timely manner;

(b) Make reports to the [Department] **director** promptly as required by ORS Chapter 656 and the [Department's] **director's** [A]administrative [R]rules;

(c) Pay to the [Department] **director** promptly all assessments[, employer and employee contributions,] and other money as it becomes due;

(d) Increase or decrease its security deposit promptly when directed to do so by the [Department] **director** pursuant to [subsection (2) of] ORS 656.407(2); and

(e) Comply with the rules and orders of the [D]**director** in processing and paying claims for compensation.

(4) After notice given as required by [subsection (2) of] ORS 656.455(2), permission granted under this section will be revoked by [Compliance] **the director** if the employer has committed acts or engaged in a course of conduct that are in violation of any provisions of section (3) of this rule.

(5) A self-insured employer shall provide **written** records which have been removed from this state to [Compliance] **the director as requested** within a reasonable time [after requested] **not to exceed 14 days or as otherwise negotiated**.

Stat. Auth: ORS 656.455, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.455

Hist: Filed 12/19/75 as WCD Admin. Order 18-1975, eff. 1/1/76 as Rule 436-51-220
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 12/27/82
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Renumbered from OAR 436-51-340, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Qualifications of a Self-Insured Employer Group

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436-050-0260 Five or more employers [in the same industry] may qualify as a self-insured employer group if the employers as a group:

(1) Incorporate or are a cooperative pursuant to ORS Chapter 60, 62, or 65. If the group is a governmental subdivision, it must have formed a governmental entity as provided under ORS 190.003 to 190.110;

(2) Designate a board of trustees and an administrator;

(3) Demonstrate a combined net worth of \$1 million or more and have excess insurance with a retention of \$100,000; or the combined net worth of the employers as a group may be less than \$1 million if the employers as a group obtain excess insurance with less than a \$100,000 retention, in which case the net worth required may be reduced by the same percentage the retention is reduced below \$100,000;

(4) Obtain excess insurance coverage of the type and amounts approved by the [D]director;

(5) Demonstrate that accident prevention is likely to improve through self-insurance;

(6) Engage an adequate staff **pursuant to OAR 436-055-0070** qualified to process claims;

(7) Develop a method approved by the [D]director to notify the [Department] **director** of:

(a) The commencement or termination of membership by employers in the group, and the effect thereof on the net worth of the employers in the group; and

(b) Whether an employer who terminates membership in the group continues to be a subject employer; and if the employer remains a subject employer what arrangements have been made to continue coverage[.];

(8) Establish a safety and health loss prevention program as required by OAR 437-001;

(9) Create a common claims fund approved by the [D]director;

(10) Designate an entity within or for the group responsible for centralized claims processing, payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the [D]director may require. [If one or more service companies are utilized to perform these functions, a service agreement between the employer and each service company that has been signed by both parties must be submitted to Compliance. The agreement shall contain the location and mailing address of the service company;] **With the approval of the director, a self-insured employer group may use service companies as authorized by ORS 656.455 instead of establishing its own place of business in this state. To obtain approval or to change or add service locations, the employer group shall file with the director a copy of the agreement entered into between the employer group and each company, and shall give the director notice of the location, mailing address, telephone number, and any other contact information of each service company;**

(11) Establish proof of financial ability by depositing, in a depository designated by the [D]director, money, government securities or other surety the [D]director may determine acceptable. The account of deposit will be determined in accordance with OAR 436-050-0180; [and]

(12) Comply with the requirements of OAR 436-050-0210 and 436-050-0220[.]; **and**

(13) Every self-insured employer group shall maintain at least one place of business in this state where the employer processes claims, keeps **written** records of claims and other records as required by OAR 436-050-0210 to 436-050-[2]0220.

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Stat. Auth: ORS 656.407, 656.430, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982 eff. 2/15/82
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Amended 12/12/85 as WCD Admin. Order 9-1985 eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987 eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Applying for Certification as a Self-Insured Employer Group: Private Employers

436-050-0270 (1) Employers applying for certification as a self-insured employer group must submit:

(a) An application for the group applying for self-insurance in a form and format prescribed by the [D]**director**;

(b) Proof in the form of a certificate from the Corporation Division showing the employer group as a corporation or cooperative;

(c) A copy of the bylaws or corporate minutes which include:

(A) Designation of specific individuals as trustees for the corporation or cooperative and naming an administrator to administer the financial affairs of the group who, as obligee, shall furnish a fidelity bond with the group in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities; and

(B) The criteria utilized by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group[.];

(d) A current financial statement of each member making application which taken collectively shows the following:

(A) The combined net worth of all members making application for coverage shall not be less than \$1 million unless the employers as a group have obtained excess insurance coverage with less than a \$100,000 retention in which case the net worth will be reduced[.] by the same percentage the retention is reduced below \$100,000; and

(B) Working capital in an amount establishing financial strength and liquidity of the business;

(e) An individual report by employer showing the employer's payroll by class and description and loss information for the last four calendar years;

(f) With the exception of governmental subdivisions, an agreement jointly and severally binding each member for the payment of any compensation and moneys due to the [Department] **director** by the group and/or any member of the group. The agreement shall be in a form and format prescribed by the Director;

(g) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(h) Proof of an adequate staff qualified to process claims by:

(A) Employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function [that is certified] **and is qualified** in accordance with

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OAR 436-055-0070; or

(B) Contracting the services of one or more service companies that employ, at each claims processing location, at least one person that is **qualified in accordance with OAR 436-055-0070 and is** actually involved in the self-insured employer's claims processing[, that is certified in accordance with OAR 436-055-0070]. If one or more service companies are used, a service agreement between the employer group and each service company, that meets the requirements of OAR 436-050-0260(10), must be submitted[.] **for approval of the director;**

(i) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170;

(j) A procedure for notifying the [Department] **director** of:

(A) The commencement or termination of employers within the group and the effect on the net worth of the group; and

(B) Arrangements made by an employer leaving the group to continue insurance coverage.

(k) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300[.]; and

(L) The type of surety deposit the employer group wishes to provide, with appropriate justification.

(2) Notwithstanding subsection (1)(d) of this rule, the [D]**director** may require an audited financial statement before considering an application by a group for self-insurance.

(3) Within 60 days of receipt of all information required in section (1) of this rule,[Compliance] **the director** will review the application and notify the employer group that the request for certification as a self-insured employer group is denied and the reason therefore; or, that the group is qualified as a self-insured employer group. The notice shall include:

(a) The amount of surety deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-050-0170; and

(c) The type, retention and limitation levels of excess insurance required.

(4) The certification of self-insurance will be issued upon receipt of the surety deposit, the appropriate excess insurance binder and modification to the occupational safety and health loss control program.

(5) Unless a date is specified by the applicant, the effective date of certification will be the first day of the calendar quarter following the date the requirements of section (4) of this rule are met.

Stat. Auth: ORS 656.407, 656.430, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Applying for Certification as a Self-Insured Employer Group: Governmental Subdivisions

436-050-0280 (1) Governmental subdivisions applying for certification as a self-insured employer group must submit:

(a) An application for the group applying for self-insurance in a form and format prescribed by the [D]director;

(b) Proof that the governmental subdivisions have formed an intergovernmental entity as provided under ORS 190.003 to 190.110;

(c) An intergovernmental agreement which includes:

(A) Designation of specific individuals as trustees for the group and naming an administrator to administer the financial affairs of the group who, as obligee, shall furnish a fidelity bond with the group in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities; and

(B) The criteria to be used by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group[.];

(d) A current financial statement of each member making application which taken collectively shows the combined net worth of all members making application for coverage shall not be less than \$1 million unless the employers as a group have obtained aggregate excess insurance coverage with less than a \$100,000 retention in which case the net worth will be reduced by the same percentage the retention is reduced below \$100,000;

(e) An individual report by employer showing the governmental subdivision's payroll by class and description and loss information for the last four calendar years;

(f) A resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the [Department] director under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(g) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(h) Proof of an adequate staff qualified to process claims by:

(A) Employing and retaining at [the] each claims processing location, at least one person that is actually involved in the [self-insured group's] claims processing function[, that is certified] and is qualified in accordance with OAR 436-055-0070; or

(B) Contracting the services of one or more service companies that employ, at each claims processing location, at least one person that is actually involved in the self-insured group's claims processing, that is certified in accordance with OAR 436-055-0070. If service companies are used, a service agreement between the group and each service company, that meets the requirements of OAR 436-050-0260(10), must be submitted[.];

(i) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170[.];

(j) A procedure for notifying the [Department] director of:

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(A) The commencement or termination of governmental subdivisions within the group and the effect on the net worth of the group; and

(B) Arrangements made by a governmental subdivision leaving the group to continue insurance coverage[.];

(k) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300[.]; **and**

(L) The type and amount of surety deposit the group wishes to provide, with appropriate justification. In no case shall the amount be less than \$300,000.

(2) Notwithstanding subsection (1)(d) of this rule, the [D]**d**irector may require an audited or certified financial statement before considering an application by a group for self-insurance.

(3) Within 60 days of receipt of all information required in section (1) of this rule,[Compliance] **the director** will review the application and notify the group that the request for certification as a self-insured employer group is denied and the reason therefore; or, that the group is qualified as a self-insured employer group. The notice shall include:

(a) The amount of surety deposit required; **and**

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-050-0170; and the type, retention and limitation levels of excess insurance required.

(4) The certification of self-insurance will be issued upon receipt of the surety deposit, the appropriate excess insurance binder and if applicable, a service agreement between the employer and service company that has been signed by both parties.

(5) Unless a subsequent date is specified by the applicant, the effective date of certification will be the date the certification is issued.

Stat. Auth: ORS 656.407, 656.430, 656.704 and 656.726(4)

Stats. Implemented: ORS 656.407 and 656.430

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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

**Commencement/Termination of Employers with a Self-Insured Employer Group;
Effect on Net Worth; Extension of Coverage; Change in Entity; Change of Address**

436-050-0290 (1) Prospective new members of a self-insured employer group shall submit an application to the board of trustees, or its administrator. The trustees, or administrator, may approve the application for membership pursuant to the bylaws of the self-insured group. Once approved, the administrator or board of trustees shall submit to [Compliance] **the director** an endorsement, within 30 days of the effective date of membership, in a form and format as approved by the [D]**d**irector which shall be accompanied by:

(a) A current financial statement of the employer applying;

(b) An agreement signed by the administrator of the self-insured group and the employer, making the employer jointly and severally liable for the payment of any compensation and moneys due

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to the [Department] **director** by the group and/or any member of the group; or, if a governmental subdivision self-insured group, a resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the [Department] **director** under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(c) A statement showing the effect on the new worth of the group; and

(d) The employer's payroll by class and description and loss information for the last four fiscal or calendar years.

(2) Incomplete submissions or incorrectly completed endorsements to add new members received by [Compliance] **the director** will not be considered filed. Failure to file a correct and complete endorsement with the required supporting documentation within 30 days of the effective date of membership may result in the assessment of civil penalties.

(3) Individual members may elect to terminate their participation in a self-insured group or be subject to cancellation by the group pursuant to the bylaws of the group. Such cancellation or termination shall not be effective prior to approval by [Compliance] **the director** and only after the self-insured group has submitted the following information for review:

(a) A statement showing the effect of said termination on the net worth of the group;

(b) Evidence that the employer requesting termination has made alternate arrangements for coverage if the employer continues to employ; and

(c) The requested date of cancellation or termination.

(4) Upon receipt of the required information, the [D]**director** may approve the cancellation or termination of the employer provided:

(a) Such cancellation or termination does not adversely affect the net worth of the group to the extent that the group would no longer qualify for a self-insured status; and

(b) Sufficient evidence has been presented to insure that the employer, if employing, retains workers' compensation coverage.

(5) Once approved, the group will be notified in writing of the effective date of cancellation or termination.

(6) An employer within a group shall, if there is a change in the employing legal entity, again apply for membership within the group, in accordance with [OAR 436-050-0290] **this rule**. A change in legal entity includes, but is not limited to:

(a) When a partner joins or leaves the partnership;

(b) When the employer is a sole proprietorship, partnership or corporation, and changes to a sole proprietorship, partnership or corporation; or

(c) When an employer sells an existing business to another person(s), except in the case of a corporation.

(7) An employer within a group shall, within 10 days after there is a change of address or assumed business name, notify the board of trustees, or administrator, of the change. The administrator

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or board of trustees shall, within 10 days, submit to [Compliance] **the director** an endorsement as notice of the change. A change of address includes, but is not limited to:

- (a) Establishment of a new or additional location; or
- (b) Termination of an existing location.

(8) The endorsement required by section (7) of this rule shall state specifically which location is being deleted and/or which is being added. It shall also identify the type of address, whether it is mailing, operating, or the principal place of business.

(9) The employer group will be responsible for maintaining records on the whereabouts of employers that have been canceled or have terminated their participation in the group.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.434 and 656.440

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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Self-Insured Employer Group, Common Claims Fund

436-050-0300 (1) A self-insured employer group shall establish under the direction and control of the board of trustees and administrator, a common claims fund for the sole purpose of ensuring the availability of funds to make certain the prompt payments of all compensation and all other payments that may become due from such self-insured employer group under the workers' compensation law.

(2) Except as provided in section (5) of this rule, the balance of the common claims fund shall be maintained in an amount at least equal to 30 percent of the average of the group's paid losses for the previous four years.

(3) The self-insured group may, from time to time, be required by the [D]**director** to increase the amount maintained in the common claims fund.

(4) By March 1 of each year, a self-insured employer group shall provide [Compliance] **the director** with adequate documentation to [allow the division to] validate the balance in the common claims fund.

(5) For governmental subdivisions certified as a self-insured employer group, the balance of the common claims fund shall be maintained in an amount at least equal to 60 percent of the average of the group's yearly paid losses for the previous four years.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented:

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Employers in Same Industry; Basis for Determination

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436-050-0330 [(1) The Director shall use the procedure outlined in section (2) of this rule when determining if employers applying as a self-insured employee group are in the same industry.

(2) Utilizing the "Manual Classification by Industrial Schedules and Group", published by the National Council on Compensation Insurance, each classification code assigned an employer during the last policy year will be matched to the corresponding code listed in the manual. A "schedule" number will be determined for each code. The annual gross payroll will then be calculated for all classifications under a "schedule" number. A schedule number having the largest gross payroll will determine the type of industry.]

Stat. Auth: ORS 656.430, ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.430

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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88]
Repealed 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Group Self-Insurance Revocation

436-050-0340 Notwithstanding ORS 656.440, the certification of a self-insured employer group may be revoked by the [D]director after giving 30 days notice if:

(1) The employer group fails to comply with [section (7) and/or (8) of] ORS 656.430(7) or (8), or the requirements contained in OAR 436-050-0260, 0270, 0280, 0290, or 0300 [or 0330];

(2) The employers within a group number less than five;

(3) The net worth of the group falls below that required by OAR 436-050-0260(3);

(4) The employer group commits any violation for which a civil penalty could be assessed under ORS 656.745; or

(5) Any false or misleading information is submitted by the employer group or any member of the group.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.434 and 656.440

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/01/01

Responsibility for Providing Coverage under a Lease Arrangement

436-050-0400 (1) Every worker-leasing company providing workers to a client shall satisfy the requirements of ORS 656.017 and 656.407.

(2) Every worker-leasing company providing leased workers to a client shall also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active guaranty contract on file with the [D]director or is certified under ORS 656.430 as a self-insured employer. In the latter circumstance, the client's guaranty contract insurer or self-insured employer will be deemed to provide insurance coverage for all leased workers and subject workers of the client.

(3) If an insured client allows its guaranty contract to terminate or if a self-insured client, allows its[.] certification to terminate and the client continues to employ subject workers or has leased workers, the client shall be considered a noncomplying employer unless the worker leasing company

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has made the filing with the [D]director as provided in OAR 436-050-0410(1).

(4) A client can [only] obtain leased workers from **only** one worker-leasing company at a time unless the client has an active guaranty contract on file with the [D]director or is certified under ORS 656.430 as a self-insured employer.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
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Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Notice to Director of Lease Arrangement; Termination

436-050-0410 (1) A worker-leasing company shall file written notice with the [D]director that it is providing leased workers to a client and workers' compensation coverage. The notice shall be in a form and format as prescribed by bulletin. A copy of the notice must also be filed by the leasing company with its insurer. The notice must be correct and complete, and must be filed within 14 days after the effective date of the lease arrangement or contract.

(2) A worker-leasing company may terminate its obligation to provide workers' compensation coverage by giving to the client and the [D]director written notice of the termination. A copy of the termination notice must also be filed by the leasing company with its insurer. A notice of termination shall state the effective date and hour of termination, but the termination shall be effective not less than 30 days after the notice is received by the [D]director. Notice to the client under this section shall be given by mail, addressed to the client at its last-known address. [If the client is a partnership, notice may be given to any of the partners. If the client is a corporation, notice may be given to any agent or officer of the corporation upon whom legal process may be served.]

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

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Temporary Worker Distinguished from Leased Worker

436-050-0420 (1) A person who provides a worker to work for a client will be considered to be providing the worker on a "temporary basis" only if there is [a] contemporaneous written documentation, retained by either the client or the temporary service provider, which indicates the duration of the work **to be** performed and the worker is provided **pursuant to ORS 656.850(1)(b)** under one or more of the following conditions:

(a) [To replace an absent worker who will return, such as during a] **Special situations to cover employee absences or employee leaves including but not limited to such things as** maternity leave, vacation, jury duty, or illness **from which the permanent worker will return to work;**

(b) To fill a professional skill shortage;

(c) To staff a seasonal workload;

(d) To staff a special assignment or project where the worker will be terminated or assigned to another temporary project upon completion;

(e) Where student trainees are provided through a work experience program which is operated by a school district or community college, and in which the trainee is paid by the school district or community college; or

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(f) The work contract is part of the client's overall employment selection program, such as where new workers must satisfactorily pass a probationary period before being granted permanent employee status.

(2) If a person provides workers, by contract and for a fee, to work for a client and any such workers are not provided on a "temporary basis," that person will be considered a worker-leasing company.

(3) If a person provides both leased workers and workers on a temporary basis, that person shall maintain payroll records that show specifically which workers are provided on a temporary basis. If the payroll records do not specify which workers are provided on a temporary basis, all workers are deemed to be leased workers.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
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License Required

436-050-0430 No person shall perform services as a worker-leasing company in this state without first having obtained a license therefor from the [D]director.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
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Qualifications and Applications for License as a Worker-Leasing Company

436-050-0440 (1) Each applicant for initial license or renewal as a worker-leasing company shall:

(a) Be either an Oregon corporation or a legal entity authorized to conduct business in this state;

(b) Maintain workers' compensation coverage pursuant to ORS 656.017; **and**

(c) Pay the required licensing fee of \$1,250.

(2) Each applicant for initial license or renewal as a worker-leasing company must submit an application for license in a form and format as prescribed by bulletin which includes but may not be limited to:

(a) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS Chapter 654 and collect the information necessary to establish each client's experience rating[.]; **and**

(b) A listing of the company's controlling persons.

(3) Each license issued under these rules shall automatically expire two years after the date of issuance unless renewed by the licensee.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
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Recordkeeping

436-050-0450 (1) Every licensed worker-leasing company shall designate and give notice to the [D]director of one location [and] mailing address, **at least one telephone number, and any other contact information** in this state where the worker-leasing company maintains records of, and relating to, notices of leasing arrangements.

(2) Every licensed worker-leasing company shall have at least one authorized representative of the worker-leasing company at the designated place of business in this state **knowledgeable to respond to inquiries regarding leasing arrangements and client contracts**.

(3) For the purposes of this rule, those records that must be maintained at the worker-leasing company's in-state location include, but are not limited to:

(a) Copies of signed **worker leasing** notices [of leasing arrangements];

(b) Copies of signed notices of termination of leasing arrangements;

(c) Copies of signed contracts between the worker-leasing company and clients; **and**

(d) [Copies of signed contracts between the worker-leasing company and its workers; and

(e)] Payroll records for all workers which identify leased workers subject to coverage by the worker-leasing company; leased workers not subject to coverage by the workers leasing company; and, payroll records for all regular and temporary employees of the worker-leasing company.

(4) If the designated in-state location, or authorized representative is changed, the worker-leasing company shall notify the [D]director within 30 days of the effective date of the change.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94

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Reporting Requirements of a Self-Insured Worker-Leasing Company

436-050-0455 (1) A self-insured worker-leasing company shall maintain and report to the National Council on Compensation Insurance separate statistical data for each client whose coverage is provided by the self-insured employer. Reporting shall be according to the uniform statistical plan prescribed by the [D]director according to ORS 737.225(4).

(2) Records relating to the client statistical data for self-insured worker-leasing companies shall be made available for review by the National Council on Compensation Insurance upon request.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94

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Disqualification, Suspension, Revocation of License

436-050-0460 (1) The [D]director may disqualify, suspend or revoke the worker-leasing company's license upon a determination that the worker-leasing company has failed to comply with these rules or [repeatedly] has received **more than one** [penalties] **penalty** per OAR 436-050[-0010(4)]. Reasons for disqualification, suspension or revocation include, but are not limited to:

(a) Insolvency, whether the worker-leasing company's liabilities exceed their assets or the

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worker-leasing company cannot meet its financial obligations;

(b) If the worker-leasing company or any controlling person has been convicted of dishonest, fraudulent or illegal practices or conduct in any business or profession;

(c) If any controlling person has been convicted of a crime within the past 10 years, an essential element of which is fraud;

(d) If the worker-leasing company has willfully [or repeatedly] violated or failed **more than once** to comply with any provisions of ORS Chapters 654, 656, 659, 731 or 737; or

(e) If the worker-leasing company is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker-leasing business.

(2) For the purposes of this rule:

(a) "Suspension" and its variations means a stopping by the [D]director of the worker-leasing company's authority to provide leased workers to clients for a specified period of time.

(b) "Revocation" and its variations means a permanent stopping by the [D]director of the worker-leasing company's authority to provide leased workers to clients.

(c) "Show-cause hearing" means an informal meeting with the [D]director in which the worker-leasing company shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the [D]director to suspend or revoke a worker-leasing company's authority to provide leased workers to clients.

(3) Suspension or revocation under this rule will not be made until the worker-leasing company has been given notice and the opportunity to be heard through a show-cause hearing before the [D]director and "show cause" why it should be permitted to continue to be licensed as a worker-leasing company.

(4) A show-cause hearing may be held at any time the [D]director finds that a worker-leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the [D]director.

(5) Following a show-cause hearing, the [D]director may rescind the proposed order if the worker-leasing company establishes to the [D]director's satisfaction its ability and commitment to comply with ORS 656 and these rules.

(6) A suspension may be in effect for a period of up to two years.

(7) After a revocation of a worker-leasing company's authority to provide leased workers to clients has been in effect for five years or longer, it may reapply for license.

(8) Appeal of proposed and final orders of suspension or revocation issued under this rule may be made as provided in OAR 436-050-0008 and OAR 436-001.

(9) Notwithstanding section (3) of this rule, the [D]director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker-leasing company fails to maintain workers' compensation coverage; or if the [D]director finds there is a serious danger to public health or safety[, in accordance with OAR 436-001-0290].

(10) A disqualification, suspension or revocation issued in accordance with this rule shall apply

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to any new entity created from the suspended entity through the sale, transfer or conveyance of ownership interest or of the entity's assets to another entity which takes over its operations.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94

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Monitoring/Auditing

436-050-0470 (1) The division shall monitor and may conduct periodic audits of employers as necessary to ensure compliance with the worker-leasing company licensing and performance requirements.

(2) All pertinent records of the worker-leasing company as required by OAR 436-050-0450, including but not limited to payrolls and employment records, client contracts, employee contracts, notices of leasing arrangements and cancellations and endorsements thereto, shall be disclosed upon request of the [D]irector.

(3) Pursuant to ORS 656.726(8) and 656.758, the [D]irector may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers shall provide the [D]irector with all pertinent books, records and payrolls upon request.

(4) For the purposes of this rule, both the worker-leasing company and the worker-leasing client shall be considered employers.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

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