

OAR 436-050

Employer/Insurer Coverage Responsibility

OAR 436-050-0003, and 050-0400 through 050-0470

Effective September 15, 2003

Administrative Order No. 03-056

**Oregon Department of Consumer and Business Services
Workers' Compensation Division**

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050**

EMPLOYER/INSURER COVERAGE RESPONSIBILITY

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NOTE: Vertical bars in the right margin indicate significant changes in this September 15, 2003 revision. Housekeeping, other minor changes, and rule/section number changes are not marked.

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050**

436-050-0003 Applicability of Rules

- (1) These rules are effective September 15, 2003, to carry out the provisions of:
- (a) ORS 656.017 - Employer required to pay compensation and perform other 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.
 - (g) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.
 - (h) ORS 656.430 - Certification of self-insured employer.
 - (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.
 - (n) ORS 656.850 and 656.855 - Worker-leasing companies.
 - (o) ORS 731.475 - Insurer's in-state location.
- (2) 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

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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

Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

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436-050-0400 Responsibility for Providing Coverage under a Lease Arrangement

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

(4) A client can obtain leased workers from only one worker-leasing company at a time unless the client has an active guaranty contract on file with the 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
Amended 12/23/94 as WCD Admin. Order 94-063, eff. 2/1/95
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

436-050-0410 Notice to Director of Lease Arrangement; Termination

(1) Within 14 days after the effective date of the lease arrangement or contract, a worker-leasing company must file written notice with the director and its insurer, using Form 440-2465, that it is providing leased workers to a client and workers' compensation coverage. The notice must be correct and complete, and must include:

- (a) The client's:
 - (A) Legal name;
 - (B) FEIN or other tax reporting number;
 - (C) Type of ownership;
 - (D) Primary nature of business;
 - (E) Mailing address; and
 - (F) Street address in Oregon;
- (b) The worker leasing company's:
 - (A) Legal name;
 - (B) Mailing address;
 - (C) FEIN or other tax reporting number;
 - (D) WCD worker leasing license number, if any;

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- (E) Workers' compensation insurer's name (or "self-insured");
- (F) Effective date of leasing contract;
- (G) Contact name and phone number; and
- (H) A signature of a representative of the worker leasing company.

(2) A worker-leasing company may terminate its obligation to provide workers' compensation coverage by giving to its insurer, its client, and the director written notice of the termination. A notice of termination shall state the effective date and hour of termination, but the termination will be effective not less than 30 days after the notice is received by the director. Notice to the client under this section must be given by mail, addressed to the client at its last-known address.

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
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
 Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0420 Temporary Worker Distinguished from Leased Worker

(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 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) 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) A student worker provided and paid by a school district or community college through a work experience program; or
- (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.

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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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436-050-0430 License Required

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
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
 Repealed 8/28/03 by WCD Admin. Order 03-056, eff. 9/15/03

436-050-0440 Qualifications, Applications, and Renewals for License as a Worker-Leasing Company

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

- (a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division 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 on Form 440-2466. The form and accompanying documentation must include:

- (a) Legal name;
- (b) Mailing address;
- (c) In-state and out-of-state phone numbers;
- (d) FEIN or other tax reporting number;
- (e) Type of business;
- (f) Physical address for Oregon principal place of business;
- (g) Assumed business names;
- (h) Name of workers' compensation insurer (or "self-insured") and policy number;
- (i) WCD employer number, if any;
- (j) Names and titles of authorized representatives, including the Oregon representative;
- (k) List of controlling persons holding or controlling 10 percent or more interest in the company, including their names, titles, residence addresses, and dates of birth;
- (l) A record of any present or prior worker leasing company services provided in any state and an explanation of those services;
- (m) A letter of verification or good-standing from the controlling regulatory agency of those states in which a worker leasing license or certification is currently held;

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(n) Verification of compliance with tax laws from Oregon Employment Division, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 440-2466, the worker leasing license application;

(o) A record of any actions in which an essential element of the action involved fraud, theft, or embezzlement of monies on the part of the applicant or any controlling person; such actions may include:

(A) Criminal convictions;

(B) Lawsuits;

(C) Guilty pleas;

(D) Judgments; or

(E) Administrative actions;

(p) Full details regarding any action taken under subsection (o) of this section, including:

(A) The nature and dates of the action(s);

(B) Outcomes, sentences, and or conditions imposed;

(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and

(D) The designation and/or license number for any actions against a license;

(q) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS chapter 654, The Oregon Safe Employment Act, and collect the information necessary to establish each client's experience rating; and

(r) A notarized signature of an authorized representative of the applicant.

(3) Incomplete or incorrectly completed application packages will be rejected and returned to the applicant. The applicant will not be authorized to lease employees until the director has issued a license.

(4) Upon receipt of a completed application package, the application will be reviewed. The department may conduct a background investigation of each individual applicant and controlling person. If the application is approved, the director will issue a license.

(5) 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

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

Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0450 Recordkeeping

(1) Every licensed worker-leasing company must give notice to the director of one Oregon location where Oregon leasing records are kept. The notice must include the physical address, mailing address, telephone number, and any other contact information in this state.

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(2) Every licensed worker-leasing company must have at least one representative of the worker-leasing company at the Oregon location who is able to respond to inquiries regarding leasing arrangements and client contracts.

(3) The following records must be kept at the Oregon location:

- (a) Copies of signed worker leasing notices;
- (b) Copies of signed notices of termination of leasing arrangements;
- (c) Copies of signed contracts between the worker-leasing company and clients; and

(d) 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 worker-leasing company; and, payroll records for all regular and temporary employees of the worker-leasing company.

(4) If the designated Oregon location, or representative is changed, the worker-leasing company must notify the 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
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
 Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0455 Reporting Requirements of a Self-Insured Worker-Leasing Company

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

436-050-0460 Disqualification, Suspension, Revocation of License

(1) The 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 ORS 656.850, 656.855, or these rules. 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 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

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essential element of which is fraud, theft, or embezzlement of monies;

(d) If the worker-leasing company has willfully violated or has failed to comply with any provisions of ORS Chapters 654, 656, 659, 731 or 737; or any provisions of these rules; 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) "Disqualification" and its variations means a refusal by the director to issue a license to a prospective worker-leasing company for failure to meet the requirements of ORS 656.850, 656.855, or these rules.

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

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

(d) "Show-cause hearing" means an informal meeting with the director in which the worker-leasing company shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the 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 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 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 director.

(5) Following a show-cause hearing, the director may rescind the proposed order if the worker-leasing company establishes to the 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 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 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 director finds there is a serious danger to public health or safety.

(10) A disqualification, suspension or revocation will apply to any new entity created

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from the disqualified, suspended, or revoked 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

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

Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0470 Monitoring/Auditing

(1) The division will monitor and 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 required by these rules must be disclosed upon request of the director.

(3) Pursuant to ORS 656.726 and 656.758, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers must provide the director with all pertinent books, records and payrolls upon request.

(4) For the purposes of this rule, both the worker-leasing company and its clients 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

Hist: Filed 4/1/94 as 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

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