

**ADMINISTRATIVE ORDER NO. 5-1978
EFFECTIVE APRIL 1, 1978**

**WORKERS' COMPENSATION DEPARTMENT
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 80**

NONCOMPLYING EMPLOYERS

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**WORKERS' COMPENSATION DEPARTMENT
NONCOMPLYING EMPLOYERS**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 80**

[ED. NOTE: This Division previously adopted and published by Workers' Compensation Department as Division 52.]

436-80-001 Statutory Authority, Effective Date

(1) The Director has general rulemaking authority under provisions of ORS 656.726(3) and specific authority under ORS 656.054(3) to provide for: subject employers not having coverage for subject workers to cease employing subject workers; processing of compensable claims of injured workers of noncomplying employers; reimbursement of claim costs to the State Accident Insurance Fund; recovery of claim costs and penalties from non-complying employer, and the assessment of penalties.

(2) In order to bring rules for the administration of noncomplying employers into conformance with Legislative changes enacted in Chapter 73, Oregon Laws 1977 (Senate Bill 422) and Chapter 804, Oregon Laws 1977 (Senate Bill 1050) these amendments are being promulgated.

(3) The rules adopted by Administrative Order WCB 15-1975 on September 22, 1975 will be superseded by the adoption of these amended rules.

Stat. Auth.: ORS Ch. 656

Hist.: WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-003 Applicability of Rules

(1) OAR 436-80-060 applies to workers injured after October 4, 1973.

(2) OAR 436-80-040 applies to employers who fail to comply with ORS 656.017 after October 4, 1977.

Stat. Auth.: ORS Ch. 656

Hist.: WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCD 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-005 Definitions

(1) "Administrative Services" means the Administrative Services Division of the Workers' Compensation Department.

(2) "Compliance" means the Compliance Division of the Workers' Compensation Department.

(3) "Department" means the Workers' Compensation Department

(4) "Director" means the Director of the Workers' Compensation Department.

(5) "Hearings" means the Hearings Division of the Workers' Compensation Board.

(6) "Fund" means the State Accident Insurance Fund.

(7) "Legal" means the Department of Justice Workers' Compensation Division which serves as counsel to the Workers' Compensation Department

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Stat. Auth.: ORS Ch. 656
Hist.: WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-006 Administration of Rules

Any order issued by the Compliance Division in carrying out the Director's authority to enforce ORS Chapter 656 and the rules adopted pursuant thereto are considered orders of the Director.

Stat. Auth.: ORS Ch. 656
Hist.: WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-010 Initiation of Proceedings; Issuance of Noncomplying Employer Order

When it comes to the attention of Compliance that an employer, who is a subject employer, has failed to provide workers' compensation coverage for subject workers, Compliance shall issue an order, stating the pertinent facts, and declaring the employer to be a noncomplying employer. Compliance shall cause the order with a notice to the employer to be served on the employer. The notice shall include a statement of the employer's rights and liabilities under ORS 656.052, 656.054, and 656.735.

Stat. Auth.: ORS Ch. 656
Hist.: WCB 10-1970, f. & eff. 7-24-70; WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-84, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-020 When a Hearing on the Order Is Not Requested

If a hearing on the order issued under OAR 436-80-010 is not requested within the 20 days allowed by ORS 656.740, Compliance may request Legal to commence proceedings to enjoin the employer under ORS 656.052(3).

Stat. Auth.: ORS Ch. 656
Hist.: WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-030 When a Hearing on the Order is Requested

If a person who is served with an order issued under OAR 436-80-020 files a request for a hearing within the time allowed by ORS 656.740, Compliance shall furnish Legal with pertinent records in the matter as requested.

Stat. Auth.: ORS Ch. 656
Hist.: WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-040 Assessment of Civil Penalties Against Noncomplying Employer: Hearing on Proposed Assessment

(1) After the order declaring an employer a noncomplying employer is final, Compliance may assess a civil penalty against the employer as authorized by subsections (1) and (2) of ORS 656.735.

(2) The amount of penalty, when assessed against the employer pursuant to ORS 656.735(1), shall not exceed \$1,000 for the period set forth in the order and will be determined by taking into account the following factors:

(a) Whether the employer knew or should have known he was a noncomplying employer.

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(b) The length of period of noncompliance.

(c) Whether this period is the first time of non-compliance or not.

(d) The amount of premium the employer would have paid during the noncomplying period if he had insurance.

(e) Any other fact significantly relevant.

(3) The amount of penalty, when assessed against the employer pursuant to ORS 656.735(2), shall not exceed \$25 per day and will be determined by taking into account the following facts:

(a) Whether the employer knew or should have known he was a noncomplying employer.

(b) The length of period of noncompliance.

(c) Whether this period is the first time of non-compliance or not.

(d) The amount of premium the employer would have paid during the noncomplying period if he had insurance.

(e) Any other fact significantly relevant.

(4)(a) If a subject worker of a noncomplying employer receives a compensable injury while in the employ of such employer, Compliance shall, after the noncomplying employer order is final and the claim is closed, assess a civil penalty against such employer as required by ORS 656.054(2) and 656.735(3). For the purposes of this section, a claim for a nondisabling compensable injury is considered closed if 30 days elapse during which the worker receives no medical services, as evidenced by the reports the Fund makes to Administrative Services under OAR 436-80-070(1). Administrative Services shall in each case notify Compliance when the 30-day period has elapsed.

(b) The amount of penalty, when assessed against the employer, may be 10 percent of the total claim cost, reduced to the nearest \$50, but not less than \$100 nor more than the maximum penalty set forth in ORS 656.735(3). Compliance may take into account the amount of penalties assessed, if any, under ORS 656.735(1) and (2), the factors mentioned in sections (2) and (3) of this rule and other relevant facts.

(5) Compliance shall cause an order assessing a civil penalty, with a notice to the employer of his rights under ORS 656.740, to be served on the employer. If the noncomplying employer requests a hearing on a proposed assessment, Compliance shall furnish Legal with pertinent records in the matter as requested.

(6) When an order assessing a penalty becomes final, Compliance shall transfer the matter to Administrative Services and Administrative Services shall proceed to collect the penalty.

Stat. Auth.: ORS Ch. 656

Hist: WCB 4-1973(Temp). f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78.

43640-050 Service of Notice, Order or Assessment

When rules 436-80-006 through 436-80-40 require Compliance to serve an order or notice on an employer, Compliance shall serve the document:

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- (1) By delivering a copy to the employer in the manner provided by ORS 15.080; or
- (2) By sending a copy of the document to the employer by certified mail with instructions to deliver to the addressee only, return receipt requested. If the employer is a corporation the certified mail may be addressed to any one of the persons named in ORS 15.080(1).

Stat. Auth.: ORS Ch. 656
Hist.: WCB 10-1970, f. & eff. 7-24-70; WCB 4-1973(Temp) f. & eff. 12-6-73, WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-060 When a Worker Files a Claim for an Injury

- (1) When Compliance issues an order under OAR 436-80-010 declaring an employer a noncomplying employer, if a subject worker has filed a claim for an injury sustained during the period of noncompliance while the worker was employed by such employer:
- (a) Compliance shall refer the claim with a copy of the order and the results of its investigation to the Fund for processing as required by ORS 656.054;
- (b) Compliance shall send a copy of the order to the worker and inform the worker that the claim has been referred to the Fund;
- (c) When the Fund accepts or denies the claim, it shall notify the claimant, employer, and Compliance of its action within the time required by ORS 656.262; and
- (d) The notice shall also inform each party of his right to a hearing under ORS 656.233 on questions of compensability.
- (2) When Compliance receives a claim and finds that, at the time of the injury, either the worker was not a subject worker or his employer was not a subject employer:
- (a) Compliance shall refer the claim to the Fund and advise the Fund of its finding of nonsubjectivity and the basis of its finding;
- (b) The Fund shall deny the claim, basing its denial on the finding of Compliance and any other appropriate grounds, and notify the claimant and employer of its action; and
- (c) The notice to the worker shall also inform the worker of his right to a hearing under ORS 656.283.

Stat. Auth.: ORS Ch. 636
Hist.: WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1979(Admin), f. 9-22-75, eff. 10-11-75, WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-070 Reimbursement of State Accident Insurance Fund for Costs Incurred for Injured Worker of Noncomplying Employer

- (1) When the Fund pays compensation to a claimant or incurs other costs on a claim referred to it under ORS 656.054, the Fund shall within thirty days report the payment to Administrative Services. At the end of each calendar quarter, the Fund shall submit to Administrative Services a request for reimbursement of all expenditures made from the Industrial Accident Fund during the quarter covered by the report, itemizing by claimant expenditures made for all claimants of noncomplying employers. There shall be offset against such expenditures, any amounts received by the Fund and reported to Administrative Services under sections (3) and (4) of this rule. Costs incurred by the Fund for which reimbursement will be allowed including:

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(a) All compensation paid claimant.

(b) All expenses incurred for medical services.

(c) Attorney fees paid claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the Fund, but not fees and sums paid under ORS 656.262(8) and 656.382(1).

(d) A reasonable amount for administrative costs of the Industrial Accident Fund at a rate fixed by the Fund with the approval of the Department.

(2) Administrative Services shall review the request and issue the reimbursement out of the Administrative Fund of the Department. However, the Department retains the right to audit the request at a later date and adjust the amount of the reimbursement as may be indicated.

(3) When a damage action is brought against a noncomplying employer or an action is brought against a third party by an employe of a noncomplying employer or the employe's beneficiaries, or by the Fund as the paying agency for such an employe, as authorized by ORS 656.576 to 656.597, the Fund shall report the commencement and termination of such action to Administrative Services. Thereafter, at the end of each calendar year, the Fund shall report the status of all such actions that are pending.

(4) When an action for damages against an employer or third party is settled or if damages are recovered, the Fund shall within thirty days report to Administrative Services the amount of the recovery retained by the Fund under ORS 656.593(1)(c).

(5) Administrative Services is responsible for collecting from noncomplying employers those costs incurred by the Industrial Accident Fund for which the Fund is entitled to reimbursement from the Department under this rule. Administrative Services shall inform each noncomplying employer of his liability under ORS 656.054(3) and keep the employer advised of costs incurred by the Fund.

Stat. Auth.: ORS Ch. 656

Hist.: WCB 10-1970, f. & eff. 7-24-70; WCB 4-1973(Temp), f. & eff. 12-6-73; WCB 4-1974, f. 2-13-74, eff. 3-11-74; WCB 15-1975, f. 9-22-75, eff. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78

436-80-080 Collection of Subject Worker's Payment

(1) When Compliance Division finds upon audit that the noncomplying employer has withheld monies from subject workers pursuant to ORS 656.506, it may collect such money from the noncomplying employer.

(2) Administrative Services is responsible for collecting from noncomplying employers those workers' payments not collected by Compliance and referred to it by Compliance.

Stat. Auth.: ORS Ch. 656

Hist.: WCD 5-1978(Admin), f. 3-31-78, eff. 4-1-78