

**ADMINISTRATIVE ORDER NO. 7-1987  
EFFECTIVE JANUARY 1, 1988**

**OREGON DEPARTMENT OF INSURANCE AND FINANCE  
WORKERS' COMPENSATION DIVISION  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 80**

**NONCOMPLYING EMPLOYERS**

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

**436-80-001      AUTHORITY FOR RULES.**

These rules are promulgated under the Director's authority contained in ORS 656.726 and 656.054.

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  
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88

**436-80-002      PURPOSE**

It is the purpose of the Director that under the provision of ORS 656.726(3) and ORS 656.054 rules be established to ensure the requirements of ORS 656.017 are met. To meet that responsibility the Director has delegated to Compliance the responsibility of ensuring the requirements of the statutes, rules and bulletins of the Department are complied with as they relate to employer coverage.

Hist: Filed 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88

**436-80-003      APPLICABILITY OF RULES**

These rules are effective January 1, 1988, to carry out the provisions of:

(1) ORS 656.017 - Employer required to pay compensation and perform other obligations and duties.

(2) ORS 656.052 - Prohibition against employment without coverage; proposed order declaring noncomplying employer; effect of failure to comply.

(3) ORS 656.054 - Claim of injured worker of noncomplying employers; notice of proposed penalty; recovery of costs from noncomplying employer.

(4) ORS 656.735 - Civil penalty for noncomplying employers; amount; liability of corporate officers; effect of final order; penalty as preferred claim; disposition of moneys collected.

(5) ORS 656.740 - Review of proposed order declaring noncomplying employer, proposed assessment or civil penalty; insurer as party; hearing.

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  
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88

**436-80-005      DEFINITIONS**

For the purpose of these rules unless the context requires otherwise:

(1) "Administrative Services" means the Administrative Services Division of the Department of Insurance and Finance.

(2) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Insurance and Finance.

(3) "Department" means the Department of Insurance and Finance.

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(4) "Director" means the Director of the Department of Insurance and Finance or the Director's delegate for the matter.

(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.

Hist: WCD 5-1978 (Admin), f. 3-31-78, eff. 4-1-78  
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**436-80-006            ADMINISTRATION OF RULES**

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

Hist: WCB 4-1973 (Temp), f. 12-6-73, 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  
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88

**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.

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

**436-80-020            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).

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**

(1) A request for hearing on an order issued under OAR 436-80-010 must specify the grounds upon which the employer contests the order and must be received by the department within 20 calendar days after the employer receives the order.

(2) When a person who is served with an order 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.

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  
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**436-80-040            ASSESSMENT OF CIVIL PENALTIES AGAINST NONCOMPLYING**

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**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.
- (b) The length of period of noncompliance.
- (c) Whether this period is the first time of noncompliance 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 noncompliance or not.
- (d) The amount of premium the employer would have paid during the non-complying period if he had insurance.
- (e) Any other fact significantly relevant.

(4) If a subject worker of a noncomplying employer receives a compensable injury while in the employ of such employer, Compliance shall, after the non-complying 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 subsection, 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.

(a) 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 656.735(1) and (2), the factors mentioned in (2) and (3) above and other relevant facts.

(5) Compliance shall cause an order assessing a civil penalty, with a notice to the employer of 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

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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.

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  
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**436-80-050 SERVICE OF NOTICE, ORDER OR ASSESSMENT**

When rules 436-80-006 through 436-80-040 requires Compliance to serve an order or notice on an employer, Compliance shall serve the document by delivering a copy to the employer in any manner provided by Oregon Rules of Civil Procedure 7 D.

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  
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**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, and 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 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 the right to a hearing under ORS 656.283 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 the 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 the right to a hearing under ORS 656.283.

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  
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**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

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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 subsections (3) and (4) of this rule. Costs incurred by the Fund for which reimbursement will be allowed including:

(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 proposed by the Fund and approved by the Director prior to June 30 of each year.

(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 employee of a noncomplying employer or the employee's beneficiaries, or by the Fund as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, 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 the liability under ORS 656.054(3) and keep the employer advised of costs incurred by the Fund.

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  
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88

**436-80-080            COLLECTION OF SUBJECT WORKER'S PAYMENT**

(1) When Compliance 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

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those workers' payments not collected by Compliance and referred to it by Compliance.

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