

BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of)	
Oregon Administrative Rules (OAR))	ORDER OF ADOPTION
Chapter 436, Division 080,)	No. 03-065
)	
Noncomplying Employers)	

The Director of the Department of Consumer and Business Services, pursuant to the general rulemaking authority under ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436 (Workers' Compensation Division), division 080, Noncomplying Employers.

On September 12, 2003, the Workers' Compensation Division filed the *Notice of Proposed Rulemaking/Hearing* with the Secretary of State to amend rules governing Noncomplying Employers. A Notice of Periodic Review of Rules was contained in the *Notice*. The *Statement of Need and Fiscal Impact* accompanied the *Notice*. Copies of the *Notice* and *Statement* were mailed to interested persons and legislators in accordance with ORS 183.335(1) and OAR 436-001-0000 and posted to the Workers' Compensation Division's web site. The notice was published in the October, 2003 *Oregon Bulletin*.

On October 22, 2003, a public hearing was held as announced. In addition, the record was held open for written testimony through 5:00 p.m. October 27, 2003. A written summary of testimony received and agency responses thereto, as well as principal documents relied upon, will be on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879.

RULE SUMMARY:

These rules have been amended in part to reflect Senate Bill 233's changes to ORS chapter 656. In addition to a number of "housekeeping" amendments, these rules:

- (436-080-0020 & 0030) Amend the time frames for appeal under ORS 656.740.
- (436-050-0040) Eliminate claim closure penalties for noncomplying employers.
- (436-050-0050) Repeal specific requirements affecting service of orders by the director.

FINDINGS:

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the Director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT:

- (1) Amendments to OAR Chapter 436, Division 050, as set forth in Exhibit "A", attached hereto and incorporated by reference herein, **are adopted on this 3rd day of December 2003 to be effective January 1, 2004.**
- (2) A certified copy of the amended rules adopted herein shall be filed with the Secretary of State.
- (3) A copy of the amended rules with revision marks shall be filed with the Legislative Counsel pursuant to ORS 183.715 within ten (10) days after filing with the Secretary of State.

DATED this 3rd day of December, 2003.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

Vertical bars in the right margin of the attached rule(s) indicate significant changes.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division at (503) 947-7810.

Attachments

Distribution: WCD-ID, S0, S2, NM

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 080**

NONCOMPLYING EMPLOYERS

JANUARY 1, 2004

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NOTE: Vertical bars in the right margins mark substantive revisions to the previously published rules.

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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 080**

436-080-0001 Authority for Rules

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

Stat. Auth.: ORS 656.054, ORS 656.726

Stats. Implemented: ORS 656.726

Hist: WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 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
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0002 Purpose

It is the purpose of the director that under ORS 656.726(4) 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 the division the responsibility of ensuring the requirements of the statutes, rules, and bulletins of the department are complied with as they relate to employer coverage.

Stat. Auth.: ORS 656.054, ORS 656.726

Stats. Implemented: ORS 656.726

Hist: Filed 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0003 Applicability of Rules

These rules are effective January 1, 2004 and 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.

Stat. Auth.: ORS 656.054, ORS 656.726

Stats. Implemented: ORS 656.726

Hist: WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, ef. 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, ef. 1-1-90

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Amended 11/29/90 as WCD Admin. Order 28-1990, ef. 12/26/90
Amended 01/10/92 as WCD Admin. Order 3-1992, ef. 2/1/92
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 1/9/98 as WCD Admin. Order 98-051, eff. 1/23/98
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0005 Definitions

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

- (1) "Department" means the Department of Consumer and Business Services.
- (2) "Director" means the director of the Department of Consumer and Business Services or the director's delegate.
- (3) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.
- (4) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656.054, ORS 656.726
Stats. Implemented: ORS 656.726
Hist: WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, ef. 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, ef. 1-1-90
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0006 Administration of Rules

Any order issued by the division in carrying out the director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto is considered an order of the director.

Stat. Auth.: ORS 656.054, ORS 656.726
Stats. Implemented: ORS 656.052, ORS 656.054, ORS 656.726
Hist: WCB 4-1973 (Temp), f. 12-6-73, ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, ef. 1-1-88
Amended 11/29/90 as WCD Admin. Order 28-1990, ef. 12/26/90
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0010 Initiation of Proceedings; Issuance of Noncomplying Employer Order

If an employer has failed to comply with ORS 656.017, the division will investigate. If the division finds the employer is a subject employer that has failed to file proof of qualification in the manner required by ORS 656.407, as either a carrier-insured employer or a self-insured employer, the division will issue a Proposed and Final Order declaring the employer to be a noncomplying employer, and assess a civil penalty pursuant to ORS 656.735(1) for violation of ORS 656.052.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.017, ORS 656.052, ORS 656.735
Hist: WCB 10-1970, f. & ef. 7-24-70;
WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 11/29/90 as WCD Admin. Order 28-1990, ef. 12/26/90

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Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0020 When a Hearing on the Order Is Not Requested

If the employer does not request a hearing on the order within the 60 days allowed by ORS 656.740, the division may request the Department of Justice to commence proceedings to enjoin the employer under ORS 656.052(3).

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, ORS 656.735, ORS 656.740 (section 9, chapter 170, Oregon Laws 2003)

Hist: WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12/22/89 as WCD Admin. Order 4-1989, ef. 1-1-90
Amended 11/29/90 as WCD Admin. Order 28-1990, ef. 12/26/90
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0030 When a Hearing on the Order Is Requested

(1) A request for hearing on an order issued under OAR 436-080-0010 or 436-080-0040 must specify the grounds upon which the employer contests the order and must be mailed or delivered to the division within 60 calendar days after the mailing of the order.

(2) When a person who is served with an order timely files a request for a hearing, the division will forward the request and other pertinent information to the Hearings Division.

(3) A division officer or employee is authorized to appear (but not make legal argument) on behalf of the director in a hearing or in a class of hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given consent is maintained by the division and the Department of Justice.

(4) "Legal argument" as used in ORS 183.452 and this rule has the same meaning as in the Attorney General's Model Rule of Procedure 137-003-0008 (1) (c) and (d), which is hereby adopted by reference.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, ORS 656.735, ORS 656.740

Hist: WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, ef. 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, ef. 1-1-90
Amended 11/29/90 as WCD Admin. Order 28-1990, ef. 12/26/90
Amended 01/10/92 as WCD Admin. Order 3-1992, ef. 2/1/92
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0040 Assessment of Civil Penalties Against Non-complying Employer; Hearing on Proposed Assessment

(1) In accordance with ORS 656.735(1), the amount of penalty for a person's first violation of ORS 656.052(1) shall be the greater of \$1,000 or twice the premium the employer would have paid during the non-complying period if insurance had been provided.

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(a) The division may reduce the amount of the penalty due, to 105% of the amount of premium the employer would have paid during the noncomplying period if insurance had been provided if, prior to the penalty order becoming final, the employer:

(A) Agrees to not contest the penalty order;

(B) Provides evidence satisfactory to the division that it is no longer a subject employer or, if it is still a subject employer, that it has now complied with ORS 656.052(1);

(C) Provides adequate payroll information to enable the division to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and

(D) Makes arrangements satisfactory to the division for prompt payment of the reduced penalty amount.

(b) If 105% of the amount of premium the employer would have paid during the noncomplying period is less than \$500, the reduced penalty will be \$500.

(2) The amount of penalty, when assessed against the employer pursuant to ORS 656.735(2), shall be \$250 per day for each calendar day the employer has continued to violate ORS 656.052(1), commencing with the first day of such violation:

(a) The division may reduce the amount of the penalty due to 150% of the amount of premium the employer would have paid during the non-complying period if insurance had been provided if, prior to the penalty order becoming final, the employer:

(A) Agrees to not contest the penalty order;

(B) Provides evidence satisfactory to the division that it is no longer a subject employer or, if it is still a subject employer, that it has now complied with ORS 656.052(1);

(C) Provides adequate payroll information to enable the division to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and

(D) Makes arrangements satisfactory to the division for prompt payment of the reduced penalty amount.

(b) If 150% of the amount of premium the employer would have paid during the noncomplying period is equal to or greater than \$250 per calendar day of noncompliance, there will be no reduction of the penalty amount.

(c) If 150% of the amount of premium the employer would have paid during the noncomplying period is less than \$1000, the reduced penalty will be \$1000.

(3) For the purpose of this rule, "premium the employer would have paid during the noncomplying period" means:

(a) If payroll records are available, actual premium using the applicable occupational base rate premium applied to the payroll of the employer during the period of noncompliance; or

(b) If payroll records are not available, estimated premium based upon the number of workers employed during the noncomplying period times the average weekly wage as defined in

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ORS 656.005(1), using the applicable assigned risk base rated premium during the period of noncompliance.

(4) The division will mail or otherwise serve an order assessing a civil penalty, with a notice to the employer of rights under ORS 656.740.

(5) When a penalty order becomes final, the division will transfer the matter to the Business Administration Division of the department to collect the penalty.

Stat. Auth.: ORS 656.052, ORS 656.726, ORS 656.735

Stats. Implemented: ORS 656.052, 656.054 (section 1, chapter 170, Oregon Laws 2003), ORS 656.735, ORS 656.740

Hist.: WCB 4-1973(Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78;
Renumbered from 436-52-030, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88;
WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90;
WCD 95-057(Temp), f. 7-26-95, er.7-26-95
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0050 Service of Notice, Order or Assessment

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, ORS 656.735, ORS 656.740

Hist.: WCB 10-1970, f. & ef. 7-24-70;
WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88
Amended 11/29/90 as WCD Admin. Order 28-1990, effective 12/26/90
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Repealed 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0060 When a Worker Files a Claim for an Injury

(1) When the division issues an order under OAR 436-080-0010 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, the division will:

(a) Refer the claim with a copy of the order and the results of its investigation to the assigned claims agent for processing as required by ORS 656.054; and

(b) Inform the worker, the worker's representative, if represented, and the employer that the claim has been referred to the assigned claims agent;

(2) The notice to the employer will inform the employer of the right to object to the claim.

(3) If the employer wishes to object to the claim, the employer shall request a hearing. The request for hearing must be filed within 60 days from the date of the mailing of the Notice of Referral.

(4) When the assigned claims agent accepts or denies the claim, it shall notify the worker, employer, and the division of its action within the time provided by ORS 656.262.

(5) When the division finds that at the time of the injury, either the worker was not a subject worker or the employer was not a subject employer, the worker and employer shall be

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notified of such determination. The worker may request a hearing by filing a hearing request within 60 days after the mailing of the determination. The hearing request must be sent to the Workers' Compensation Division administrator. The worker and employer shall be parties to any such hearing, and will be notified by the Hearings Division of the time and place set for hearing.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.054

Hist: WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1979 (Admin), f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, ef. 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, ef. 1-1-90
Amended 11/29/90 as WCD Admin. Order 28-1990, ef. 12/26/90
Amended 4/15/92 as WCD Admin. Order 8-1992, ef. 4/15/92 (Temporary)
Amended 10/13/92 as WCD Admin. Order 16-1992, ef. 10/13/92
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 1/9/98 as WCD Admin. Order 98-051 eff. 1/23/98
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0065 Determination Of Assigned Claims Agent

(1) When selecting an assigned claims agent, the director will consider claims processing performance data collected by the division. That data and data provided by potential assigned claims agents will be used to determine which claims agent can deliver the most timely and appropriate benefits to injured workers and can best control claim costs and administrative costs. In addition, the director may use any other factors the director considers appropriate.

(2) If no qualified entity agrees to be an assigned claims agent, the director may require one or more of the three highest premium producing insurers to be assigned claims agents. In addition to the premium consideration, the criteria described in section (1) of this rule will be used to make that determination.

Stat. Auth.: ORS 656.054, ORS 656.726

Stats. Implemented: ORS 656.054

Hist: Filed 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0070 Reimbursement of Assigned Claims Agent for Claims Costs for Injured Workers of Noncomplying Employers

(1) When an assigned claims agent pays compensation to a claimant or incurs other costs on a claim referred to it under ORS 656.054, the assigned claims agent shall report the payment to the department as established by contract with the assigned claims agent. Any amounts received by the assigned claims agent and reported to the department under subsections (5) and (6) of this rule will be offset against such expenditures. Subject to section (3) of this rule, costs incurred by the assigned claims agent for which reimbursement will be allowed include:

- (a) All compensation paid claimant.
- (b) All expenses incurred for medical services.
- (c) Attorney fees paid to the claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the assigned claims agent, but not fees and sums paid under ORS 656.262 (11) and 656.382(1).
- (d) A reasonable amount for administrative costs at a rate proposed by the assigned

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claims agent and approved by the director prior to June 30 of each year. Late requests for increase on the rate of reimbursement, if approved, shall be effective on the date the request was received by the director.

(2) The department will review the request and issue the reimbursement out of the Workers' Benefit Fund.

(3) The department will conduct an annual audit of the noncomplying employer claim files processed by the assigned claims agent to validate the amount reimbursed pursuant to section (1) of this rule. Reimbursement shall not be allowed, if, upon such audit, any of the following are found to apply:

(a) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing;

(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;

(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;

(d) The separate payments of compensation have not been documented in accordance with generally accepted accounting procedures; or

(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the department.

(4) The assigned claims agent may appeal any disapproval of reimbursement made by the department under this rule pursuant to ORS 183.310 to 183.550 and as provided by OAR 436-080-0008.

(5) 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 assigned claims agent as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, the assigned claims agent shall report the commencement and termination of such action to the department. Thereafter, at the end of each calendar year, the assigned claims agent shall report the status of all such actions that are pending.

(6) When an action against an employer, or third party is settled or if damages are recovered, the assigned claims agent shall report within (30) days to the department the amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c).

(7) The Business Administration Division of the department is responsible for collecting from noncomplying employers those costs incurred by the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the department under this rule. The Business Administration Division will inform each noncomplying employer of the liability under ORS 656.054(3) and keep the employer advised of costs incurred by the assigned claims agent.

Stat. Auth.: ORS 656.054, ORS 656.726
Stats. Implemented: ORS 656.054
Hist: WCB 10-1970, f. & ef. 7-24-70;

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WCB 4-1973 (Temp), f. & ef. 12-6-73;
WCB 4-1974, f. 2-13-74, ef. 3-11-74;
WCB 15-1975, f. 9-22-75, ef. 10-11-75;
WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, effective 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, effective 1-1-90
Amended 01/10/92 as WCD Admin. Order 3-1992, effective 2/1/92
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

436-080-0080 Collection of Subject Worker's Payment

(1) When the division finds the noncomplying employer has withheld monies from subject workers pursuant to ORS 656.506, it will collect such money from the noncomplying employer.

(2) The Business Administration Division is responsible for collecting from noncomplying employers those workers' payments not collected by the Workers' Compensation Division and referred to it by the Workers' Compensation Division.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.506

Hist.: WCD 5-1978 (Admin), f. 3-31-78, ef. 4-1-78
Amended 12-18-87 as WCD Admin. Order 7-1987, ef. 1-1-88
Amended 12/22/89 as WCD Admin. Order 4-1989, ef. 1-1-90
Amended 1/2/96 as WCD Admin. Order 95-073, ef. 1/5/96
Amended 12/3/03 as WCD Admin Order 03-065, eff. 1/1/04

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the
PERMANENT Rule(s) adopted on

December 3, 2003 by the
Date prior to or same as filing date

Department of Consumer and Business Services
Workers' Compensation Division
Agency and Division

OAR chapter 436
Administrative Rules Chapter No.

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Rules Coordinator Telephone

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Address

to become effective January 1, 2004 was published in the October 2003 Oregon Bulletin.**
Date upon filing or later Month and Year

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: OAR 436-050-0165, 436-050-0480

AMEND: OAR

436-045-0008	436-050-0080	436-050-0180	436-050-0290	436-080-0003	436-080-0070
436-050-0003	436-050-0090	436-050-0185	436-050-0400	436-080-0005	436-080-0080
436-050-0005	436-050-0100	436-050-0190	436-050-0440	436-080-0006	436-085-0008
436-050-0006	436-050-0110	436-050-0195	436-055-0008	436-080-0010	436-150-0008
436-050-0008	436-050-0120	436-050-0200	436-060-0008	436-080-0020	436-160-0003
436-050-0040	436-050-0150	436-050-0210	436-070-0008	436-080-0030	436-160-0310
436-050-0050	436-050-0160	436-050-0220	436-075-0008	436-080-0040	436-160-0320
436-050-0055	436-050-0170	436-050-0260	436-080-0001	436-080-0060	436-160-0340
436-050-0060	436-050-0175	436-050-0270	436-080-0002	436-080-0065	436-160-0350
		436-050-0280			436-160-0360

REPEAL: OAR 436-050-0020, 436-050-0150T, 436-050-0160T 436-050-0165T, OAR 436-080-0050

ORS 656.704, 656.726(4)

Statutory Authority

ORS 183.335; OAR 137-001; OAR 436-001-0000 and 436-001-0005

Other Authority

ORS chapter 656

Statutes being Implemented

RULE SUMMARY

These rules have been amended in part to reflect Senate Bill 233's changes to ORS 656. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. SB 233 also eliminated claim closure penalties for non-complying employers and changed the notification requirements for termination of guaranty contracts. In addition, these rules include a number of "housekeeping" amendments and supersede temporary OAR 436-050 rules indicated above after "REPEAL."

These rules:

- Repeal specific requirements affecting service of orders by the director.
- Reduce data reporting requirements for industry codes.
- Eliminate certain requirements to report coverage elections and cancellation of elections.
- Explain the notice and reporting requirements regarding the insurer's termination of guaranty contracts.
- State that active self-insurance certification remains in effect if a guaranty contract has been filed.
- Require notification of workers and other parties at least 10 days prior to changing claims processing locations.
- Require insurers and self-insured employers to keep documentation of dates payments are mailed.
- Require submission of audited financial statements by self-insured employers under certain conditions.
- Provide that an irrevocable standby letter of credit may be accepted by the director as an alternative to a surety bond as a security deposit. This provision has been in effect under authority of temporary rules effective 7/18/03.
- Provide that government securities, certificates of deposit, or time deposit accounts will not be accepted as new or replacement security deposits by self-insured employers effective January 1, 2004; require self-insured employers with existing securities of this type to complete a "Security Agreement and Notice to Intermediary," Form 440-4023, granting the department a security interest in and control over those financial assets.
- Provide that excess insurance coverage must be specific on a per occurrence basis, and that such coverage may include aggregate excess insurance.
- Incorporate annual reporting requirements for self-insured employers formerly published only in Bulletin 209.
- Require that future claim liability estimates or annual incurred losses include losses incurred but not reported.
- Require that a new self-insured employer's deposit is not less than the amount of the approved self-insured employer retention level for the employer's excess workers' compensation insurance.
- Require that each entity included under a self-insurance certification enter into an agreement making the entity jointly and severally liable for payment of compensation and moneys due.
- Require that self-insured employer groups maintain coverage records relating to each member.
- Prohibit a worker leasing company from providing workers' compensation coverage to another leasing company.
- Provide for assessment of civil penalties against worker leasing companies or prospective leasing companies that fail to meet the requirements of relevant rules. Provide penalty matrixes for worker leasing companies that violate these rules and for companies that operate as worker leasing companies without a license

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

/s/ John L. Shilts
Authorized Signer

December 3, 2003
Date

John L. Shilts, Administrator, Workers' Compensation Division
Printed name

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

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