

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

In the Matter of the Amendment of)	
Oregon Administrative Rule (OAR))	ORDER OF ADOPTION
Chapter 436, Division 105,)	No. 03-057
Employer-at-Injury Program)	

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 105, Employer-at-Injury Program.

On March 13, 2003, the Workers' Compensation Division filed the *Notice of Proposed Rulemaking/Hearing* with the Secretary of State to amend rules governing Employer-at-Injury Program. 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 Division's web site. The notice was published in the April, 2003 *Oregon Bulletin*.

On April 22, 2003, a public hearing was held as announced. In addition, the record was held open for written testimony through 5:00 p.m. April 25, 2003. A written summary of testimony received and agency responses thereto, as well as principal documents relied upon, is 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:

Rules governing the Employer-at-Injury Program, OAR 436-105, have been amended to include several substantive changes. These rules:

- Require the insurer or self-insured employer to retain at the authorized claim processing location, documentation of the transitional work, to include the start date, wage and hours, and a description of the job duties.
- Modify the eligibility requirements regarding work releases. Under OAR 436-105-0510(2)(b), effective 10/1/01, eligibility required a work release with restrictions that prevented the worker from performing regular work. Conversely though, eligibility was contingent on some kind of work release, so a period of temporary disability would end eligibility for the Employer-at-Injury Program. These amended rules require only that the worker not have a release to perform regular work from the medical service provider.
- Simplify the process to resolve Employer-at-Injury Program disputes by: (1) making it the insurer's option to request or not request a director's review; (2) providing that if the insurer does want director's review, it may submit additional information in support of its position. Currently, if the Workers' Compensation Division disagrees with the insurer's position following reconsideration pursuant to OAR 436-105-0008, the file is automatically referred for a director's review.

- Provide that (an additional) type of medical release meets Employer-at-Injury Program criteria: A statement by the medical service provider that indicates the worker is not released to regular employment, accompanied by an approval of a job description, which includes the job duties and physical demands required for the transitional work.
- Provide that a medical release which indicates restrictions are permanent does not expire in 30 days.
- Clarify time frames for expiration of medical releases due to missed medical appointments. If the worker misses a follow-up appointment, the medical provider must, within 14 days from the date of the missed appointment, provide a new medical release or a signed and dated statement indicating previous restrictions are still in effect in order for the medical release to be continuous.

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 , as set forth in Exhibit "A", attached hereto and incorporated by reference herein, **are adopted on this 16th day of May, 2003 to be effective June 08, 2003.**
- 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 16th day of May, 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, S5, S8

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 105**

EMPLOYER-AT-INJURY PROGRAM

EFFECTIVE JUNE 8, 2003

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NOTE: Bold 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 105

436-105-0001 Authority for Rules

The director has adopted OAR Chapter 436, Division 105 under the authority of ORS 656.622 and 656.726.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0002 Purpose of Rules

(1) These rules explain what assistance and reimbursements are available from the Employer-at-Injury Program, who is qualified, and how to receive assistance and reimbursements.

(2) The Employer-at-Injury Program encourages the early return to work of injured workers by providing incentives to employers who return their injured workers with open claims to transitional work.

(3) The Employer-at-Injury Program is an employer-option and employer-activated program, administered by the insurer at the time of injury. The program consists of Wage Subsidy, Worksite Modification, and Employer-at-Injury Program Purchases.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered from OAR 436-110-0510(1st ¶), 8/14/01 WCD Admin. Order 01-057, eff. 10/1/01

436-105-0003 Applicability of Rules

(1) OAR 436-105-0510(2)(c) applies to all individual Employer-at-Injury Programs which began on or after October 1, 2001.

(2) Except for OAR 436-105-0510(2)(c), these rules apply to all individual Employer-at-Injury Programs which began on or after June 8, 2003.

(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 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01
Amended 12/11/02 as WCD Admin. Order 02-063 eff. 12/11/02 (Temp)
Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0005 Definitions

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

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

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

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(3) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

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

(5) "Employer-at-Injury" means the organization in whose employ the worker sustained the injury or occupational disease, or made the claim for aggravation.

(6) "Fund" means the Workers' Benefit Fund.

(7) "Premium" means the premium which results from calculating payroll multiplied by applicable rates of the employer's individual insurer multiplied by the employer's experience rating modification less any discount, assessments, surcharges, or taxes.

(8) "Regular employment" means the employment the worker held at the time of injury or the claim for aggravation.

(9) "Reimbursable wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging, and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. Bonus pay shall be considered reimbursable only when provided as part of a written contract as a means to increase a worker's wages. Any other form of remuneration is not reimbursable.

(10) "Transitional Work" means temporary work with the employer-at-injury which is not the worker's full duty regular work and is assigned because the worker cannot perform full duty regular work. Transitional work must be within the worker's injury-caused limitations and may be created through modification of the worker's regular work, job restructuring, assistive devices, worksite modification(s), reduced hours, or reassignment to another job. Transitional work must be within the employer's course and scope of trade or profession.

(11) "Worker Leasing Company" means the person which provides workers, by contract and for a fee, as prescribed in ORS 656.850.

(12) "Work site" means a primary work area available for a worker to use to perform the required job duties. The work site may be the employer's, client's, or worker's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A work site may include a worker's personal property or vehicle if required to perform the job.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0006 Administration of Rules

(1) Orders issued by the division to enforce ORS 656.622 or these rules are orders of the director.

(2) The department maintains the financial integrity of the fund and all reimbursement is subject to the availability of funds. If the funds are too low for all reimbursements, the director has the final authority to determine how the funds will be disbursed.

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(3) The director may use monies from the fund for activities to provide information about and encourage the reemployment of injured workers. A maximum of \$250,000 may be used in a fiscal year, July 1 to June 30. The director must approve all expenditures. Activities include, but are not limited to:

- (a) Advertisements and promotion of reemployment assistance programs and associated production costs; and
- (b) Public reemployment assistance program conferences and workshops.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0008 Reconsideration/Appeal to the Director

(1) The division will deny any reimbursement for Employer-at-Injury Program assistance it finds in violation of these rules. The division has the discretion to deny any reimbursement of Employer-at-Injury Program assistance it determines is not reasonable, practical, or feasible, or considers an abuse of the program.

(2) Parties directly affected by a division Employer-at-Injury Program decision may request a reconsideration by sending a written request for reconsideration to the administrator no later than 60 days after the date the decision is issued. Facsimiles that are legible and complete are acceptable and will be processed the same as originals. Reconsideration must precede a director's review.

(3) The request for reconsideration shall specify the reasons why the decision is appealed and may include additional documentation. No reconsideration shall be granted unless the request meets the requirements of this rule.

(4) The division will reconsider the decision and notify all directly affected parties of its decision in writing. The affected parties may request a director's review by sending a written request no later than 60 days after the date the reconsideration was issued. The request shall specify the reasons why the decision is appealed and may include additional documentation.

(5) The director may require any affected party to provide information or to participate in the director's review. If the party requesting the director's review fails to participate without reasonable cause as determined by the director, the director may dismiss the review.

(6) The director's review decision will be issued in writing and all directly affected parties will be notified. The director's review decision is final and not subject to further review by any court or other administrative body.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0500 Insurer Participation in the Employer-At-Injury Program

(1) When the employer-at-injury requests assistance, the insurer shall be an active participant in providing reemployment assistance. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

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(2) The insurer shall notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice shall be issued:

(a) Upon acceptance or reopening of a non-disabling or disabling claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance shall contain the following language:

(a) The notice to the worker shall appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].

(b) The notice to the employer-at-injury shall appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer shall respond to the employer's request for assistance and administer the Employer-at-Injury Program according to these rules. The insurer shall assist the employer to:

(a) Obtain a qualifying medical release, pursuant to section (6) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer Wage Subsidy requests specified in OAR 436-105-0520(1);

(d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3);
and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) The insurer may use the Employer-at-Injury Program upon establishing the worker and employer meet the eligibility criteria stated in OAR 436-105-0510(1) and (2).

(6) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

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(a) All medical releases must be dated and related to the accepted conditions of the claim. The date the medical release is issued by the medical provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical releases qualify under these rules:

(A) A medical release that states the worker's specific restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work;

(c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (f) of this section;

(d) A medical release with no specific end date expires in 30 days, except medical releases that indicate the restrictions are permanent;

(e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, if the worker does not return to the medical service provider for a follow-up appointment, except as provided in subsection (f) of this section; and

(f) If the worker misses a follow-up medical appointment, the medical release will lapse unless, within 14 days of the missed appointment, the medical service provider provides a new medical release or a signed and dated statement that the previous medical release is still in effect.

(7) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last *Employer-at-Injury Program Reimbursement Request*. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the wage subsidy period as follows:

(A) Payroll records shall state the dates (daily), hours worked, wage rate(s), and the worker's gross wages for the wage subsidy period;

(B) Payroll records shall state the wage rate or rates if the worker is paid by any method other than hourly wage. If only part of the period covered by the payroll record is for transitional work, the payroll record must be supplemented with documentation of how the worker's earnings were prorated for the Wage Subsidy; and

(C) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.

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(d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program purchases;

(e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2)(f); and

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties.

(8) The insurer may end the Employer-At-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-At-Injury Program when the worker or employer meet any of the end of eligibility criteria listed in OAR 436-105-0510(3).

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)

Stats. Implemented: ORS 656.340, 656.622

Hist: Amended and renumbered, sections (4)-(7) from OAR 436-110-0540(2), (3), & (7), 8/14/01, WCD Admin. Order 01-057, eff. 10/1/01
Amended 12/11/02 as WCD Admin. Order 02-063 eff. 12/11/02 (Temp)
Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0510 Eligibility and End of Eligibility for the Employer-at-Injury Program

(1) The eligibility criteria for an employer are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage during and through the Employer-at-Injury Program period;

(b) The employer is the employer at injury as defined in OAR 436-105-0005;

(c) The employer is re-employing an eligible worker while the worker's claim is open; and

(d) The employer is not currently ineligible for Employer-at-Injury Program benefits under OAR 436-105-0560.

(2) The eligibility criteria for a worker are:

(a) The worker has an accepted Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) The worker has not returned to regular work under the most recent claim opening except when there is a release for regular work and the worker is subsequently not released for regular work under the same claim opening; and

(c) The medical service provider has not released the worker to perform regular work.

(3) Reasons for ending Employer-at-Injury Program eligibility include the following, whichever occurs first:

(a) The worker or employer no longer meet the eligibility provisions stated in sections (1) and (2) of this rule. A period of temporary total disability by itself does not end eligibility;

(b) The worker works beyond a medical release provided by the medical service provider;

(c) The worker's claim is closed;

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- (d) The worker's transitional work ends;
- (e) The medical release lapses per OAR 436-105-0500(6);
- (f) The worker's need for transitional work is no longer due to the compensable injury which gave cause for use of the Employer-at-Injury Program;
- (g) The Employer-at-Injury Program reimbursement is requested; or
- (h) Sanctions under OAR 436-105-0560 preclude eligibility.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered from OAR 436-110-0520, 8/14/01, WCD Admin. Order 01-057, eff. 10/1/01

Amended 12/11/02 as WCD Admin. Order 02-063 eff. 12/11/02 (Temp)

Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0520 Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening, for a non-disabling claim or a disabling claim. If a non-disabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-At Injury Program may be used again. The worker must return to transitional work in order for the employer to receive Employer-at-Injury Program assistance except as provided in paragraph (2)(c)(B) of this rule. Assistance available includes:

(1) Wage Subsidy provides 50 percent reimbursement of a worker's gross wages for transitional work. The wages must have been paid the worker. Wage Subsidy benefits are restricted to the following conditions:

- (a) A Wage Subsidy is limited to a maximum duration of three consecutive months occurring between the dates of worker and employer eligibility and end of eligibility;
- (b) A Wage Subsidy may not start or end with paid leave;
- (c) Reimbursement is limited to wages for hours actually worked, or hours of paid leave;
- (d) If the worker has hourly restrictions, reimbursable paid leave shall be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement; and
- (e) When a worker is released for regular work during the Wage Subsidy period, and the worker is subsequently released for transitional work under the same claim opening, the Wage Subsidy may continue until the end of the three consecutive month period. The wages earned during the time the worker was released for regular work are not subject to reimbursement.

(2) Worksite Modification means altering a work site by renting, purchasing, modifying, or supplementing equipment, or changing the work process to enable a worker to work within the stated specific work restrictions caused by the compensable injury. Maximum reimbursement is \$2,500. Worksite Modification assistance is limited to the following conditions:

- (a) The worker's restrictions must be known on, or prior to, the date Worksite Modification purchases are initiated;

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(b) The form of modification shall be determined based solely on the worker's inability to perform the job due to the stated specific work restrictions caused by the compensable injury. The insurer makes the approval/denial decision and may deny a worksite modification if it determines the modification will be of little or no use to the worker during the Employer-at-Injury Program;

(c) Modifications must be provided for and used by the worker during the Employer-at-Injury Program, except under the following conditions:

(A) The modification equipment had been ordered during the Employer-at-Injury Program, and documentation is provided that the equivalent modification item(s) were loaned to and used by the worker while the worker and employer were eligible for the Employer-at-Injury Program; or

(B) The employer can demonstrate that the modification(s) were provided in good faith and the worker refused to return to work;

(d) The maximum reimbursement for a chair is \$1000;

(e) Worksite modification items become the employer's property upon the end of the Employer-at-Injury Program, except for modification items unique to the worker, such as a custom-designed tool to adapt the worker's prosthesis to a job-related task. Such items become the worker's property; and

(f) Justification for a Worksite Modification must be documented and include a written statement of the worker's specific work restrictions from the medical service provider; identification of job duties which exceed the worker's stated limitations; and a statement of how the Worksite Modification overcame the worker's restrictions.

(3) Employer-at-Injury Program Purchases are limited to:

(a) Tuition, books, and fees for a class or course of instruction to update existing skills or to meet the requirements of the transitional work position. Maximum reimbursement is \$750. Tuition, books, and fees shall be provided under the following conditions:

(A) Instruction must be provided by an educational entity accredited or licensed by an appropriate body; and

(B) Costs for tuition, books, and fees may be fully reimbursed if the worker began participation in the class or course while eligible for the Employer-at-Injury Program. Those costs will not be reimbursed if the class or course began after eligibility for the Employer-at-Injury Program ended;

(b) Tools and equipment required for the transitional work position limited to items mandatory for employment. Tools and equipment shall be provided under the following conditions:

(A) Purchases do not include items the worker possesses or duplicate Worksite Modification items;

(B) Tools and equipment may be rented or purchased;

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(C) Tools and equipment that were purchased become the employer's property upon the end of the program;

(D) Tools and equipment are for future transitional work unless the tools and equipment are assigned to the worker due to the worker's injury-caused permanent limitations;

(E) The purchase of tools and equipment do not qualify for reimbursement if their use exceeds the worker's injury-caused medical release; and

(F) Maximum reimbursement is \$1000;

(c) Clothing required for the job, except clothing the employer normally provides or the worker already possesses. Clothing becomes the worker's property. Maximum reimbursement is \$400.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered from OAR 436-110-0510, 8/14/01, WCD Admin. Order 01-057, eff. 10/1/01
Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0530 Employer-at-Injury Program Procedures for Concurrent Injuries

(1) A worker is eligible for only one Employer-At-Injury Program at a time.

(2) When a worker in an Employer-at-Injury Program incurs a new compensable injury, transitional work for the first Employer-At-Injury is considered regular work for the second Employer-at-Injury Program.

(3) If the new injury makes the first Employer-at-Injury Program unsuitable, the worker may be eligible for a second Employer-at-Injury Program under the new injury.

(4) When the worker is no longer eligible for the second Employer-At-Injury Program, the first Employer-At-Injury Program may be resumed if the employer and worker still meet eligibility criteria under that claim.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01
Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0540 Employer-at-Injury Program Reimbursement Procedures

(1) The insurer must receive all insurer required documentation for reimbursement from the employer within one year from the end of the Employer-at-Injury Program in order to qualify for reimbursement. The insurer shall date stamp each reimbursement request document with the receipt date.

(2) The insurer may request Employer-at-Injury Program reimbursement only once per Employer-at-Injury Program. The insurer shall mail, send by facsimile, hand-deliver, or with prior division approval provide electronically, the request for reimbursement to the division within one year and 30 days from the end of the Employer-at-Injury Program on an *Employer-at-Injury Program Reimbursement Request*, Form 2360, published in Bulletin 260. Reimbursements may include Wage Subsidy, Employer-at-Injury Program Purchases, and Worksite Modification. An administrative cost factor shall be computed by the division and applied to each reimbursement request.

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(3) An Employer-at-Injury Reimbursement Request must be a minimum of \$100, not including the administrative cost factor, to be subject to reimbursement.

(4) The insurer may send an *Employer-at-Injury Program Reimbursement Request* to the division when a claim was initially denied and was subsequently accepted after the Employer-at-Injury Program eligibility ended and more than one year and 30 days have passed. In that case, the insurer shall send a completed *Employer-at-Injury Program Reimbursement Request* to the division within 60 days of the first Order or Stipulation and Order accepting the claim. A copy of the Order accepting the claim, or Stipulation and Order accepting the claim, must be attached.

(5) Amended reimbursement requests must be sent to the division within one year and 30 days from the end of the Employer-at-Injury Program eligibility except as provided in section (7) of this rule. Wage Subsidy start and end dates may be amended only due to typographical errors, if satisfactory evidence of the error is provided. The insurer may not request additional administrative cost reimbursement for filing an amended reimbursement request.

(6) Amendments are to be made on a completed *Employer-at-Injury Program Reimbursement Request*, Form 2360. The amended reimbursement request must cite the corrected information with the statement "Amendment" written across the top of the form. The corrected information should be highlighted.

(7) When the division finds the insurer has submitted an *Employer-at-Injury Program Reimbursement Request* which is incomplete or contains an error, the division may return the form to the insurer for correction. When this occurs, the insurer has 60 days from the date the insurer receives the reimbursement request, or one year and 30 days from the end of Employer-at-Injury Program eligibility, whichever is greater, to make the corrections and return the corrected form to the division.

(8) The insurer shall not use Employer-at-Injury Program costs subject to reimbursement for rate making, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that Employer-at-Injury Program costs do not affect the employer's rates or dividend.

(9) If a Preferred Worker employed by an eligible employer with active Premium Exemption incurs a new injury, the claim is subject to Claim Cost Reimbursement under OAR 436-110. If the worker subsequently enters an Employer-at-Injury Program, program costs are to be separated from claim costs and will not be reimbursed as claim costs.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered, sections (1), (2), (5), (6), (8), & (9) from OAR 436-110-0540(8), (9), (10), (12), & (13), 8/14/01, as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0550 Audits

(1) Insurers and employers are subject to periodic program and fiscal audits by the division. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements must be repaid to the department.

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(2) When conflicting documentation exists, the division will utilize a preponderance of evidence standard to decide eligibility for reimbursement and if there is no clear preponderance, reimbursement will be allowed.

(3) The division reserves the right to visit the work site to determine compliance with these rules.

Stat. Auth.: ORS 656.455, 656.622, 656.726(4), 731.475

Stats. Implemented: ORS 656.455, 656.622, 731.475

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0560 Sanctions

(1) Any person who knowingly makes a false statement or misrepresentation to the director or an employee of the director for the purpose of obtaining any benefits or reimbursement from the Employer-at-Injury Program or who knowingly misrepresents the amount of a payroll, or knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an insurer, self-insured employer, employer or their representative include, but are not limited to:

(a) Misrepresenting information in order to receive Employer-at-Injury Program assistance;

(b) Making a serious error or omission which resulted in the division approving reimbursement in error;

(c) Failing to respond to employer requests for assistance or failing to administer Employer-at-Injury Program assistance; or

(d) Failure to comply with any condition of these rules.

(3) Sanctions by the director may include one or more of the following:

(a) Ordering the person to take corrective action within a specific period of time;

(b) Ordering the person being sanctioned to repay the department all, or part, of the monies reimbursed, with or without interest at a rate set by the department. The order may include the department's legal costs;

(c) Ending the employer's eligibility to use the Employer-at-Injury Program for a specific period of time; and

(d) Pursuing civil penalties under ORS 656.745 or criminal action against the party.

Stat. Auth.: ORS 656.622, 656.726(4)

Stat. Implemented: ORS 656.622, 656.745, 656.990

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0570 Issuance/Service of Sanction or Penalty Orders

(1) When a sanction or penalty order is assessed as provided in OAR 436-105-0560, the order shall be served to the party.

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(2) The director shall serve the order by delivering a copy to the party in the manner provided by Oregon Rules of Civil Procedure 7D, or by sending a copy to the party by certified mail with return receipt.

Stat. Auth.: ORS 656.268, 656.622, 656.726(4)

Stats. Implemented: ORS 656.268, 656.622, 656.704, 656.726

Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

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

May 16, 2003 by the
Date prior to or same as filing date.

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

chapter 436, division 105
Administrative Rules Chapter No.

Fred Bruyns (503) 947-7717
Rules Coordinator Telephone

350 Winter Street NE; Salem, Oregon 97301-3879
Address

to become effective June 08, 2003. Rulemaking Notice was published in the April 2003 *Oregon Bulletin.***
Date upon filing or later Month and Year

RULEMAKING ACTION

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

Amend: OAR 436-105-0003, 436-105-0008, 436-105-0500, 436-105-0510, 436-105-0520, 436-105-0530

ORS 656.726(4), 656.704
Statutory Authority

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

ORS 656.622
Statutes being Implemented

RULE SUMMARY

Rules governing the Employer-at-Injury Program, OAR 436-105, have been amended to include several substantive changes. These rules:

- Require the insurer or self-insured employer to retain at the authorized claim processing location, documentation of the transitional work, to include the start date, wage and hours, and a description of the job duties.
- Modify the eligibility requirements regarding work releases. Under OAR 436-105-0510(2)(b), effective 10/1/01, eligibility required a work release with restrictions that prevented the worker from performing regular work. Conversely though, eligibility was contingent on some kind of work release, so a period of temporary disability would end eligibility for the Employer-at-Injury Program. These amended rules require only that the worker not have a release to perform regular work from the medical service provider.
- Simplify the process to resolve Employer-at-Injury Program disputes by: (1) making it the insurer's option to request or not request a director's review; (2) providing that if the insurer does want director's review, it may submit additional information in support of its position. Currently, if the Workers' Compensation Division disagrees with the insurer's position following reconsideration pursuant to OAR 436-105-0008, the file is automatically referred for a director's review.

Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

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- Provide that (an additional) type of medical release meets Employer-at-Injury Program criteria: A statement by the medical service provider that indicates the worker is not released to regular employment, accompanied by an approval of a job description, which includes the job duties and physical demands required for the transitional work.
- Provide that a medical release which indicates restrictions are permanent does not expire in 30 days.
- Clarify time frames for expiration of medical releases due to missed medical appointments. If the worker misses a follow-up appointment, the medical provider must, within 14 days from the date of the missed appointment, provide a new medical release or a signed and dated statement indicating previous restrictions are still in effect in order for the medical release to be continuous.

Questions can be directed to:

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fred.h.bruyns@state.or.us**

Rules are available on the Internet at

<http://oregonwcd.org/policy/rules/permanent/rules.html#permrules>

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

/s/ John L. Shilts
Authorized Signer

5/16/03
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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