

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 EMPLOYER-AT-INJURY PROGRAM

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[Bracketed 8 point text is deleted]; **bold/underlined text is added**

EFFECTIVE JUNE 8, 2003

**OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 105**

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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), t[T]hese rules apply to all individual Employer-at-Injury Programs which began on or after [the effective date of these rules]June 8, 2003.****

[2)]**(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

436-105-0008 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.

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(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 [prior to a director's review] and [will] notify all directly affected parties of its decision [upon reconsideration] **in writing**.

[(5)] If, upon reconsideration, the division upholds the original decision, [i] **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.** [director's review shall begin].

[(6)] **(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.

[(7)] **(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.

(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].

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(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**, [citing the injury-caused restrictions which prevent the worker from performing regular employment]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). [The insurer must possess all medical releases citing restrictions from the medical service provider.]

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

(a) All medical releases [must state the worker's specific injury-caused restrictions, and]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) [For Employer-at-Injury Program purposes, a medical release for "light work," "light duty," or "modified work," without other specific restrictions, are not considered restrictions unless the medical service provider references the Dictionary of Occupational Titles standards] **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 [rule] **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

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medical service provider for a follow-up appointment, **except as provided in subsection (f) of this section**; and

(f) [Once restrictions have been in place,]**if the worker misses** a follow-up medical appointment[is missed by the worker], the **medical release will lapse unless, within 14 days of the missed appointment,** [restrictions previously issued by] the medical service provider [will be allowed to remain in effect for up to 14 days from the date of the missed appointment]**provides a new medical release or a signed and dated statement that the previous medical release is still in effect**[if the worker subsequently attends a medical appointment].

[(6)]**(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 [the] **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.

(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; [and]

(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.

[(7)]**(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

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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 [with restrictions] under the same claim opening; and

(c) The [worker is released for work with cited restrictions from the] medical service provider [which prevent the worker from performing] **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** [exceeds the hourly or physical restrictions cited] by the medical service provider;

(c) The worker's claim is closed;

(d) The worker's transitional work ends;

(e) The medical release lapses per OAR 436-105-0500([s]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

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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;

(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

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(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;

(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 [restrictions] **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

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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 [causes new restrictions which] 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

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