

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

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OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 105

EFFECTIVE JULY 1, 2005

NOTE: Only adopted, amended, and repealed rules are included in this document:

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EXHIBIT "A"

436-105-0003 Applicability of Rules

(1) These rules apply to all individual Employer-at-Injury Programs begun on or after [April 1, 2004.] **July 1, 2005. These rules apply to all reimbursement requests made to the division in accordance with OAR 436-105-0540(2) on or after July 1, 2005 regardless of the date an Employer-at-Injury Program began, unless the insurer requests that reimbursement be based on the rules in effect on the date an individual Employer-at-Injury Program began.**

(2) 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
Amended 3/19/04 as WCD Admin. Order 04-057 eff. 4/1/04 (Temp)
Amended 7/15/04 as WCD Admin. Order 04-060 eff. 8/1/04
Amended 5/24/05 as WCD Admin. Order 05-057, eff. 7/1/05

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, **or the employer at the time of an Own Motion opening under ORS 656.278.**

(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, **or Own Motion opening under ORS 656.278.**

(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) "Skills building" means a class or course of instruction taken by the worker for the purpose of enhancing an existing skill or developing a new skill. When skills building is the transitional work, the worker must agree in writing to take the class or course of instruction.

[10] **(11)** "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, **unless the work is "skills building."**

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

[12] **(13)** "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

Amended 5/24/05 as WCD Admin. Order 05-057, eff. 7/1/05

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

(1) An insurer shall be an active participant in providing reemployment assistance with the employer's consent. 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].

- (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 administer the Employer-at-Injury Program according to these rules. The insurer shall assist an 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 [p]urchases 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 **worker's** medical **service** 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 [(b)](e) 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 **specific end date or** 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;

(f) If the worker's medical service provider refers the worker to another medical service provider for treatment, restrictions specified in the medical release in effect at the time of the referral will not expire until the worker obtains a continued or updated medical release from the attending physician, authorized nurse practitioner, or primary care physician with a managed care organization, except:

(A) The insurer may accept updated restrictions and releases from the medical service provider to whom the worker is referred except for a release to regular work, and

(B) If the worker does not obtain a continued or updated medical release from the attending physician, authorized nurse practitioner, or primary care physician with a managed care organization within 30 days from the last referral appointment, the medical release will expire on the date of the last treatment with the referral medical service provider.

(g) An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(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;

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(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 [w]Wage [s]Subsidy period as follows:

(A) Payroll records shall state the [dates (daily)] **payroll period, wage rate(s), and the worker's gross wages for the Wage Subsidy period. The payroll record must also include the dates and** hours worked **each day if the worker has hourly restrictions**[, 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 the insurer or the division disallows reimbursement for part of a payroll period, and the payroll record does not indicate the individual dates and hours worked, the gross wages will be divided by the number of days in the payroll period. The prorated value of each day will be multiplied by the number of eligible days to determine the reimbursement amount for the payroll period; and

[c] **(D)** 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 [p]Purchases;

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

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

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services, if applicable[.];

(h) The written acceptance by the worker when skills building is used as transitional work; and

(i) Documentation, including course title, curriculum and accreditation for skills building used for transitional work when Employer-at Injury Program Purchases are requested.

(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
Amended 3/19/04 as WCD Admin. Order 04-057 eff. 4/1/04 (Temp)
Amended 7/15/04 as WCD Admin. Order 04-060 eff. 8/1/04
Amended 5/24/05 as WCD Admin. Order 05-057, eff. 7/1/05

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] **A** worker **is** [are:] **eligible for the Employer-at-Injury Program if the**

[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 meets 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] **(b)** The worker's claim is closed;

[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] **(c)** The Employer-at-Injury Program reimbursement is requested; or

[h] **(d)** 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

Amended 5/24/05 as WCD Admin. Order 05-057, eff. 7/1/05

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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)(d)(B) and (3)(a)(C)** [(2)(c)(B)] of this rule. Assistance available includes:

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

(a) A Wage Subsidy **may not exceed 66 work days and must be completed within a 24 consecutive month period** [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] **must** 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) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

[(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 **limitations imposed** [stated specific work restrictions caused] by the compensable injury **or occupational disease**. Maximum reimbursement is \$2,500. Worksite Modification assistance is [limited] **subject** 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] **will** 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 **or occupational disease**. The insurer makes the approval/denial decision and may deny a [w]**W**orksite [m]**M**odification if it determines the modification will be of little or no use to the worker during the Employer-at-Injury Program;

(c) The insurer may email the division's Reemployment Assistance Unit for help in determining the appropriateness of Worksite Modifications. The Reemployment Assistance Unit consultants will use the restriction information provided by the insurer, and their own

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professional judgment and experience to answer the insurer. The following information should be emailed to PWP.Oregon@state.or.us:

(A) Worker's name, date of injury, and claim number;

(B) Job description of transitional work including physical demands;

(C) Accepted conditions and any surgery performed;

(D) Worker's restrictions at the time purchases were or are to be initiated, and;

(E) Modification items being requested

[(c)] **(d)** 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)] **(e)** The maximum reimbursement for a chair is \$1000;

[(e)] **(f)** Worksite [m]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)] **(g)** 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, **and materials required** for a class or course of instruction to **enhance an** [update] existing skill[s] or **develop a new skill** [to meet the requirements of the transitional work position] **when skills building is used as transitional work or when required to meet the requirements of the transitional work position.** Maximum reimbursement is [\$750] **\$1,000.** Tuition, books, [and] fees, **and required materials** shall be provided under the following conditions:

(A) Instruction must be provided by an educational entity accredited or licensed by an appropriate body **or be an accredited on-line or accredited self-study course;** [and]

(B) Costs for tuition, books, [and] fees, **and required materials** 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]; **or**

(C) The employer in good faith paid for the costs of the class or course after the worker agreed to take part in the training and then the worker refused to attend.

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

(A) Purchases [do] **must** 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 **does** not qualify for reimbursement if their use exceeds the worker's injury-caused medical release; and

(F) **The** [M]**m**aximum 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

Amended 5/24/05 as WCD Admin. Order 05-057, eff. 7/1/05