

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Employer-at-Injury Program
Oregon Administrative Rules
Chapter 436, Division 105**

Effective January 1, 2006

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NOTE: Significant revisions are marked with bold lines in the right margins.

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

In the Matter of the Amendment of Oregon Administrative Rules (OAR):

	Order No.	
436-010, Medical Services	05-071)
436-015, Managed Care Organizations	05-072)
436-030, Claim Closure and Reconsideration.....	05-073)
436-035, Disability Rating Standards.....	05-074)
436-050, Employer/Insurer Coverage Responsibility ...	05-075)
436-055, Claims Examiner Certification.....	05-076)
436-060, Claims Administration	05-077)
436-105, Employer-at-Injury Program.....	05-078)
436-110, Preferred Worker Program	05-079)
436-120, Vocational Assistance to Injured Workers.....	05-080)

**ORDER OF
ADOPTION**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436.

On September 15, 2005, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking/Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0000, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its October 2005 *Oregon Bulletin*.

On November 1, 2005, a public hearing was held as announced. In addition, the record was held open for written testimony through November 7, 2005. A summary of the public testimony 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, PO Box 14480, Salem, Oregon 97309-0405.

RULE SUMMARY

Substantive amendments affect:

- Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.
- Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.
- The reporting and processing of aggravation claims;
- Elective surgery notification;
- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);

Order of Adoption
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- Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;
- Closure notice requirements in fatal claims;
- Required procedures when five years of work history are not available;
- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;
- Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);
- The reconsideration record – video recordings, duplicate records;
- Penalties upon reconsideration – limitations;
- Insurer data reporting necessary for the Workers’ Compensation Division to assess the impact of legislative changes on permanent partial disability awards;
- The effect of a regular work release on awards of work disability and social/vocational factors;
- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;
- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;
- Insurer’s notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;
- Insurers’ reporting of names or positions of key contacts to the Workers’ Compensation Division;
- The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers’ compensation insurance coverage from an eligible surplus lines insurer;
- Required training for certified claims examiners on interactions with independent medical exam providers;
- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);
- The dollar amount employers can pay for medical services on non-disabling claims;
- Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;
- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;
- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;
- Reimbursement from the Workers’ Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;
- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;
- Provision for direct assistance to workers under ORS 656.622 to promote re-employment;
- Reimbursement from the Workers’ Benefit Fund of the insurer’s vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);
- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;
- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

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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, as set forth in Exhibit "A", are attached, incorporated by reference, and **adopted on this 5th day of December 2005, to be effective January 1, 2006.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the amended rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 5th day of December 2005.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

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

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

Distribution: WCD-ID, NM, S0, S1, S2, S3, S4, S5, S6, S7, S8

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

**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 (first ¶), 8/14/01 WCD Admin. Order 01-057, eff. 10/1/01

436-105-0003 Applicability of Rules

(1) These rules apply to all individual Employer-at-Injury Programs begun on or after 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, 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.

(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."

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

(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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436-105-0006 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.

(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

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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 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 worker's medical service provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical release 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 (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, 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;

(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:

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(A) Payroll records shall state the 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;

(B) Insurers and employers may supplement payroll records with documentation of how the worker's earnings were calculated for the Wage Subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll record(s) nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days; and

(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 Purchases;

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

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

(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
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
Amended 12/5/05 as WCD Admin Order 05-078, eff. 1/1/06

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

(1) The eligibility criteria for an employer are:

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(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) A worker is eligible for the Employer-at-Injury Program if the worker has an accepted Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify.

(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. ;

(b) The worker's claim is closed;

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

(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

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) of this rule. Assistance available includes:

(1) Wage Subsidy provides 50 percent reimbursement of the gross wages paid the worker for transitional work. Wage Subsidy benefits are 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;

(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 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;

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(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.

(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 by the compensable injury or occupational disease. Maximum reimbursement is \$2,500. Worksite Modification assistance is 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 will be determined based 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 Worksite Modification 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 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

(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;

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

(f) 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;

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(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, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skills building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum reimbursement is \$1,000. Tuition, books, 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;

(B) Costs for tuition, books, 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; 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.

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

(A) Purchases 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 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

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

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.

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(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 required documentation for reimbursement 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.

(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

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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
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

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.

(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;

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- (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

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 5, 2005 by the
 Date prior to or same as filing date

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

 Administrative Rules Chapter No.

Fred Bruyns^{FB}
 Rules Coordinator

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to become effective January 1, 2006 was published in the October 2005 *Oregon Bulletin*.**
 Date upon filing or later Month and Year

Amendment of workers' compensation rules affecting injured workers, employers, medical providers, insurers, and others.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

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

ADOPT: OAR 436-055-0085, 436-060-0137, 436-060-0510, 436-120-0755

AMEND: OAR

436-010-0005	436-030-0003	436-035-0008	436-035-0420	436-060-0025	436-060-0510 ^{FB}
436-010-0008	436-030-0005	436-035-0009	436-035-0430	436-060-0030	436-105-0500
436-010-0210	436-030-0007	436-035-0011	436-035-0500	436-060-0035	436-110-0002
436-010-0220	436-030-0009	436-035-0012	436-050-0003	436-060-0040	436-110-0005
436-010-0230	436-030-0015	436-035-0016	436-050-0008	436-060-0055	436-110-0310
436-010-0240	436-030-0020	436-035-0017	436-050-0100	436-060-0060	436-110-0326
436-010-0250	436-030-0023	436-035-0019	436-050-0110	436-060-0095	436-110-0327
436-010-0265	436-030-0034	436-035-0110	436-050-0170	436-060-0105	436-110-0335
436-010-0270	436-030-0055	436-035-0190	436-050-0220	436-060-0135	436-110-0337
436-010-0280	436-030-0065	436-035-0230	436-050-0230	436-060-0137 ^{FB}	436-110-0345
436-010-0290	436-030-0115	436-035-0330	436-055-0070	436-060-0140	436-120-0003
436-010-0300	436-030-0155	436-035-0340	436-055-0100	436-060-0147	436-120-0008
436-010-0340	436-030-0165	436-035-0350	436-060-0002	436-060-0150	436-120-0320
436-015-0008	436-030-0175	436-035-0360	436-060-0008	436-060-0155	436-120-0900
436-015-0030	436-030-0185	436-035-0380	436-060-0009	436-060-0180	
436-015-0040	436-030-0575	436-035-0390	436-060-0010	436-060-0190	
436-015-0070	436-030-0580	436-035-0395	436-060-0015	436-060-0200	
436-015-0080	436-035-0005	436-035-0400	436-060-0017	436-060-0500	
436-015-0110	436-035-0007	436-035-0410	436-060-0020		

REPEAL: None

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ORS 656.726(4)

Statutory Authority

Other Authority

ORS chapter 656, primarily: ORS 656.704, Enrolled House Bill (HB) 2091 – Oregon Laws (OL) 2005, ch. 26; ORS 656.268, Enrolled HB 2404 – OL 2005, ch. 569; ORS 656.273, Enrolled HB 2405 – OL 2005, ch. 50; ORS 656.726, Enrolled HB 2408 – OL 2005, ch. 653; ORS 656.262, Enrolled HB 2718 – OL 2005, ch. 189; Enrolled HB 3318 – OL 2005, ch. 511; ORS 656.262, 656.313, 656.605, 656.622, Enrolled Senate Bill (SB) 119 – OL 2005, ch. 588; ORS 656.268, 656.745, Enrolled SB 172 – OL 2005, ch. 221; ORS 656.325, Enrolled SB 311 – OL 2005, ch. 675; ORS 656.206, 656.268, 656.319, 656.605, 656.319, Enrolled SB 386 – OL 2005, ch.461; ORS 656.260, Enrolled SB 670 – OL 2005, ch. 364

Statutes being Implemented

RULE SUMMARY

Changes directly related to 2005 legislation are marked with asterisks *. Some changes apply only to injuries that occur on or after 1/1/2006. Substantive amendments affect:

- *Hearings on workers' compensation matters currently processed by the Office of Administrative Hearings – moved to the Workers' Compensation Board, for all hearings held on or after January 2, 2006.
- *Independent medical examinations (IME)s – including a worker's right to contest the location of the exam and associated increase to 90 days for the insurer to accept or deny the claim if the worker prevails; penalty to worker for failure to attend; penalty to medical provider for failure to forward diagnostic records to the IME provider; requirement (effective 7/1/2006) for the director to develop a list of medical providers who are authorized to perform IMEs and for all IMEs to be scheduled with a physician on the list.
- *The reporting and processing of aggravation claims;
- Elective surgery notification;
- Types of care that are reimbursable after the worker becomes medically stationary (clarification only);
- *Requirements that managed care organizations submit copies of their treatment standards and protocols to the director for review and approval;
- Closure notice requirements in fatal claims;
- Required procedures when five years of work history are not available;
- Reduced insurer reporting requirements for claims in which workers have no permanent impairment;
- *Permanent total disability – including limitations on benefits if the worker incurs a new injury; criteria for re-examination or reduction; required vocational evaluations and suspension of benefits for failure to attend or non-cooperation; appeals of termination; automatic eligibility for vocational assistance upon termination of permanent total disability (by final order);
- The reconsideration record – video recordings, duplicate records;
- *Penalties upon reconsideration – limitations;
- *Insurer data reporting necessary for the Workers' Compensation Division to assess the impact of legislative changes on permanent partial disability awards;
- *The effect of a regular work release on awards of work disability and social/vocational factors;
- Requirements to round percentages of impairment – hearing and vision no longer taken to the 100th of a percent;
- Rating of impairment for skin disorders – signs and symptoms need not be present upon examination;
- Insurer's notice to employer of policy cancellation to include a statement that the guaranty contract will terminate;
- Insurers' reporting of names or positions of key contacts to the Workers' Compensation Division;
- *The right of self-insured public utilities with assets in excess of \$500 million to obtain excess workers' compensation insurance coverage from an eligible surplus lines insurer;
- *Required training for certified claims examiners on interactions with independent medical exam providers;

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- Adjustments – up and down – of insurer claims processing compliance thresholds (affecting penalties);
- *The dollar amount employers can pay for medical services on non-disabling claims;
- *Requirement (effective 7/1/2006) that Worker Requested Medical Examinations be conducted by a medical provider on the list of authorized independent medical examination providers maintained by the director;
- Increase of certain maximum penalty amounts to the \$2,000 statutory maximum;
- Eligibility for Preferred Worker Program benefits – workers must be authorized to work in the United States;
- *Reimbursement from the Workers' Benefit Fund of permanent total disability (PTD) payments made by the insurer during an appeal of termination of PTD – if the insurer prevails;
- For the purposes of reimbursement of wage subsidies under the Employer-at-Injury Program, allowance for supplemental documentation to clarify information not fully explained by the payroll record;
- *Provision for direct assistance to workers under ORS 656.622 to promote re-employment;
- *Reimbursement from the Workers' Benefit Fund of the insurer's vocational assistance costs incurred after the insurer appeals an administrative order to provide such assistance (if the insurer prevails);
- Deletion of the penalty matrix for three types of violations of the vocational assistance rules;
- Provision for the director to impose a civil penalty for violation of ORS chapter 656, in addition to violation of rules and orders of the director.

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.wcd.oregon.gov/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

12/5/05

Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.
ARC 930-2005