

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

EMPLOYER-AT-INJURY PROGRAM

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Proposed rule revisions are marked: [Bracketed 8 point text is deleted]; **bold/underlined text is added.**

Secretary of State
NOTICE OF PROPOSED RULEMAKING*

A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services, Workers' Compensation Division	OAR CHAPTER 436, DIVISION 105
Agency and Division	Administrative Rules Chapter Number
Fred Bruyns	(503) 947- 7717 Fax (503) 947-7581
Rules Coordinator	Telephone
350 Winter Street NE, PO Box 14480 Salem, Oregon 97309-0405	
Address	

RULEMAKING ACTION

ADOPT:
AMEND: OAR 436-105-0003, 436-105-0500, 436-105-0540
REPEAL: OAR 436-105-0570

ORS 656.622, 656.726(4)
Stat. Auth.

ORS 183.335; OAR 137, OAR 436-001
Other Authority

ORS 656.622
Stats. Implemented

RULE SUMMARY

The Workers' Compensation Division proposes to make permanent recent temporary amendments to OAR 436-105. These changes extend Employer-at-Injury Program benefits to home care workers who receive payment from the Oregon Department of Human Services. The Home Care Commission has entered into a collective bargaining agreement with Service Employees International Union, Local 503, OPEU. Article 16, Section 1 of the bargaining agreement states "Effective April 1, 2004, upon receipt of client request and authorization, the Employer shall provide workers' compensation insurance coverage to actively employed Home Care Workers by an appropriate insurer. . . ." The division also proposes repeal of rule 0570; this rule restates certain statutory requirements affecting service of orders.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Request for public comment: The agency requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us. The proposed rules are available on the Internet:
<http://www.cbs.state.or.us/external/wcd/policy/rules/rules.html#proprules>

June 25, 2004
Last Day for Public Comment

/s/ John L. Shilts
Authorized Signer and Date

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

*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.

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Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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

OAR CHAPTER 436, DIVISION 105
Administrative Rules Chapter Number

In the Matter of
The Amendment of:
OAR 436-105, Employer-at-Injury Program

-) Statutory Authority,
-) Statutes Implemented,
-) Statement of Need,
-) Principal Documents Relied Upon,
-) Statement of Fiscal Impact

Statutory Authority: ORS 656.622, 656.726(4)

Other Authority: ORS 183.335; OAR 137-001; OAR 436-001

Statutes Implemented: ORS 656.622

Need for the Rule(s): The Workers' Compensation Division has proposed amendments to OAR 436-105 to extend Employer-at-Injury Program benefits to home care workers who receive payment from the Oregon Department of Human Services. Temporary rules have been in place since April 1, 2004. The Home Care Commission was created by Ballot Measure 99, passed by voters on November 7, 2000. For purposes of collective bargaining, the Home Care Commission is the employer of record of home care workers hired directly by the client and paid by the Oregon Department of Human Services. The Commission has entered into a collective bargaining agreement with Service Employees International Union, Local 503, OPEU. Article 16, Section 1 of the bargaining agreement states "Effective April 1, 2004, upon receipt of client request and authorization, the Employer shall provide workers' compensation insurance coverage to actively employed Home Care Workers by an appropriate insurer. . . ."

Documents Relied Upon: Ballot Measure 99, voted on at the General Election, November 7, 2000; Collective bargaining agreement between the Home Care Commission and the Service Employees International Union, Local 503, OPEU. These documents are available for public inspection in the Administrator's Office, Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7810.

Fiscal and Economic Impact: SAIF Corporation will process all workers' compensation claims from a population of approximately 13,000 home care workers. As of April 29, 2004, 23 workers' compensation claims have been filed with SAIF Corporation. However, Oregon insurers have 60 days to accept or deny claims, and it is not known how many of these claims will be accepted. Also unknown is how many of the accepted claims will ultimately be classified as disabling, although 22 of the 23 were filed as disabling. Finally, it is not known how many of the home care workers with accepted disabling claims will be determined eligible for Employer-at-Injury Program assistance. The Employer-at-Injury Program is funded from the Workers' Benefit Fund. With only one month's experience, we cannot project the impact on the Fund. To the extent the Employer-at-Injury Program is used, it should have a positive fiscal and economic impact on home care workers specifically and the Oregon healthcare system in general.

Administrative Rule Advisory Committee consulted: Yes. However, consultation was limited to telephone contact with former advisory committee members. The Workers' Compensation Division made these contacts to assess the level of interest in holding a meeting. Because the proposed rule changes are very limited in scope, and because the Management-Labor Advisory Committee is currently studying workers' compensation return-to-work programs, all of the members contacted preferred to defer meeting until probable revisions to these rules in 2005.

/s/ John L. Shilts

May 13, 2004

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

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

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 105**

436-105-0001 Authority for Rules

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

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

Stats. Implemented: ORS 656.622

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

436-105-0002 Purpose of Rules

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

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

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

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

Stats. Implemented: ORS 656.622

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

436-105-0003 Applicability of Rules

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

(2) Except for OAR 436-105-0510(2)(c), ~~t~~**These rules apply to all individual Employer-at-Injury Programs [which began] began on or after [June 8, 2003] April 1, 2004.**

(~~3~~**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 XX/XX/XX as WCD Admin. Order 04-XXX eff. XX/XX/XX

436-105-0005 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 656.622

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

436-105-0006 Administration of Rules

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

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

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

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

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

Stats. Implemented: ORS 656.622

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

436-105-0008 Reconsideration/Appeal to the Director

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

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

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

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

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

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

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

Stats. Implemented: ORS 656.622

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

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

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

(1) [When the employer-at-injury requests assistance, the] 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.

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

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

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

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

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

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

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

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

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

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

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

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- (A) A medical release that states the worker's specific restrictions; or
- (B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work;
- (c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (f) of this section;
- (d) A medical release with no specific end date expires in 30 days, except medical releases that indicate the restrictions are permanent;
- (e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, if the worker does not return to the medical service provider for a follow-up appointment, except as provided in subsection (f) of this section; and
- (f) If the worker misses a follow-up medical appointment, the medical release will lapse unless, within 14 days of the missed appointment, the medical service provider provides a new medical release or a signed and dated statement that the previous medical release is still in effect.
- (7) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last *Employer-at-Injury Program Reimbursement Request*. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:
- (a) The worker's claim file;
- (b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;
- (c) A legible copy of the worker's payroll records for the wage subsidy period as follows:
- (A) Payroll records shall state the dates (daily), hours worked, wage rate(s), and the worker's gross wages for the wage subsidy period;
- (B) Payroll records shall state the wage rate or rates if the worker is paid by any method other than hourly wage. If only part of the period covered by the payroll record is for transitional work, the payroll record must be supplemented with documentation of how the worker's earnings were prorated for the Wage Subsidy; and
- (C) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.
- (d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program purchases;
- (e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2)(f); [and]

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(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.

(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 XX/XX/XX as WCD Admin. Order 04-XXX eff. XX/XX/XX

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

(1) The eligibility criteria for an employer are:

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

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

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

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

(2) The eligibility criteria for a worker are:

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

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

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

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

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

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

(c) The worker's claim is closed;

(d) The worker's transitional work ends;

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

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

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered from OAR 436-110-0520, 8/14/01, WCD Admin. Order 01-057, eff. 10/1/01
Amended 12/11/02 as WCD Admin. Order 02-063 eff. 12/11/02 (Temp)
Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

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

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

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

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

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

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

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determines the modification will be of little or no use to the worker during the Employer-at-Injury Program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Maximum reimbursement is \$1000;

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

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

Stats. Implemented: ORS 656.622

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

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

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

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

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

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

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

Stats. Implemented: ORS 656.622

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

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

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

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

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

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

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

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

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

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

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

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

Stats. Implemented: ORS 656.622

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

Amended 3/19/04 as WCD Admin. Order 04-057 eff. 4/1/04 (Temp)

Amended XX/XX/XX as WCD Admin. Order 04-XXX eff. XX/XX/XX

436-105-0550 Audits

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

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

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

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

Stats. Implemented: ORS 656.455, 656.622, 731.475

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

436-105-0560 Sanctions

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Implemented: ORS 656.622, 656.745, 656.990

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

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

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

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

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

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

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

Repealed XX/XX/XX as WCD Admin. Order 04-XXX eff. XX/XX/XX

ORDER NO. _____

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