

ADMINISTRATIVE ORDER NO. 13-1990
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OREGON DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110

[ASSISTANCE FROM THE WORKERS'] REEMPLOYMENT ASSISTANCE RESERVE

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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110**

436-110-001 Authority for Rules

(1) The Director has adopted OAR 436-110 by the Director's authority under ORS 656.622 and ORS 656.726(3).

(2) An order of a [d]Division or [s]Section, issued under the Director's authority to administer ORS chapter 656 and rules adopted under that chapter, shall be considered an order of the Director.

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Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Amended 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-002 Purpose of Rules

The purpose of these rules is:

(1) To prescribe the terms of eligibility for reemployment assistance to workers, and Oregon employers who reemploy or hire workers with disabling compensable injuries or diseases, and the nature and extent of the assistance, pursuant to ORS 656.622; and,

(2) To establish criteria for payment and reimbursement to insurers and employers from the reserve created in ORS 656.622.

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Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88

436-110-003 Applicability of Rules

(1) These rules govern all requests for assistance from the [Workers'] Reemployment Assistance Reserve filed with the Director on and after [January 1, 1988] **July 1, 1990**, except for assistance to sheltered workshops as provided in ORS 656.530.

(2) Requests for second injury relief filed in accordance with rules adopted under WCB Administrative Order 3-1973, on which the Board or Director issued a determination of eligibility prior to October 4, 1977, shall be processed and paid as provided for in that Administrative Order.

(3) Requests for second injury relief filed in accordance with rules adopted under WCD Administrative Order 2-1978, on which the Department issued a Wage Subsidy, Worksite Modification or Increased Cost Protection contract prior to January 1, 1982, shall be paid as provided in that Administrative Order.

[(4) Employers with Increased Cost Protection contracts may also apply for relief in accordance with the provisions of the Handicapped Workers Reserve, OAR 436-40. If it appears that the total costs of the second injury will exceed the contractual limits of the Increased Cost Protection contract, the employer may seek Handicapped Workers Reserve benefits in order to reduce those costs to the \$20,000

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limit payable in accordance with the contract.]

[(5)] **(4)** Workers' Reemployment Reserve contracts approved by the Department prior to March 16, 1987, in accordance with rules adopted under WCD Administrative Order 7-1981, shall be paid as provided in that Administrative Order.

[(6)] **(5)** Workers' Reemployment Reserve agreements approved by the Department prior to January 1, 1988, in accordance with rules adopted under WCD Administrative Order 1-1987, shall be paid as provided in that Administrative Order.

(6) Workers' Reemployment Reserve agreements approved by the Department prior to July 1, 1990, in accordance with rules adopted under WCD Administrative Order 12-1987, shall be paid as provided in that Administrative Order.

(7) The Director may waive provisions of these rules if the Director finds it necessary to carry out the provisions of ORS 656.622.

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436-110-005 Definitions

As used in these rules:

(1) "Administrative approval" means an approval or finding in a particular matter by the administrator of the Workers' Compensation Division, or the administrator's delegate for the matter. "Prior administrative approval" means that such approval, or a waiver under OAR 436-110-003(7), has been secured before any commitment is made to provide assistance governed by these rules.

(2) "Claim Cost Reimbursement" means reimbursement to the insurer from the Reserve for claim costs incurred for a preferred worker for a compensable injury or occupational disease occurring within three years of the hire date. Claim cost reimbursement does not include claim costs for the original injury or an aggravation of the original injury.

(3) "Compensation" means all benefits, including medical services and attorney fees, provided for a compensable injury to a subject worker or the worker's beneficiaries. However, it does not include expenses as defined by the National Council on Compensation Insurance, in its Workers' Compensation Statistical Plan, Section IV.

[(2)] **(4)** "Department" means the Department of Insurance and Finance.

[(3)] **(5)** "Director" means the Director of the Department of Insurance and Finance, or the Director's designee.

(6) "Disposition" or "claim disposition" means the written agreement executed by all parties in which a claimant agrees to release rights, or agrees to release an insurer or

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self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim.

[4] **(7)** "Division" means the Workers' Compensation Division of the Department of Insurance and Finance.

[5] **(8)** "Employer" means a subject Oregon employer within the meaning of the Workers' Compensation Law who meets the requirements of all other applicable state and federal regulations. "Employer-at-injury" means the [person in whose employ] **organization where** the worker sustained the injury **or occupational disease**, or made the claim for aggravation which gave rise to the need for reemployment assistance.

[6] **(9)** "Employment" used with certain modifiers has the following meanings:

(a) "Suitable employment" means permanent employment of the kind for which the worker has the necessary physical capacities, knowledge, skills or abilities, and providing a wage as close as possible to the wage currently being paid for employment which is the regular employment for the worker. For the purposes of this subsection:

(A) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(B) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(C) "Abilities" means the mental and physical capability to apply the worker's knowledge and skills.

(b) "Permanent Employment" means employment normally expected to last indefinitely subject to the employer's business practices and policies, collective bargaining agreement(s), applicable statutes and economic conditions.

(c) "Regular employment" means employment of the kind the worker held at the time of injury, the claim for aggravation, or the worker's customary employment. "Customary employment" is the worker's regular employment when it is other than the job at injury, and is the primary means by which the worker earns a livelihood.

(d) "Modified employment" is any employment, other than regular employment, which is altered to conform to the worker's permanent limitations as a result of a compensable injury.

(10) "Hire date" means the date the worker started work.

[7] **(11)** "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer.

(12) "Premium assessment" means the money due the Department under ORS 656.612 and 656.614, levied as a percentage of the insurer's direct earned premium, or of the self-insured employer's or self-insured employer group's simulated premium.

[8] **(13)** "Preferred worker" means a **subject Oregon** worker who, because of a **permanent disability resulting from a** compensable injury **or occupational disease**, is unable

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to return to regular employment [without substantial work or worksite modification] and [is eligible] **meets eligibility criteria** for assistance under these rules.

(14) "Premium exemption" means that an employer hiring a preferred worker does not report payroll on that worker for calculation of insurance premiums or premium assessments for three years from the hire date.

[9] **(15)** "Reemployment assistance" means any of the goods and services under these rules for assisting employers in the reemployment or hiring of [injured] **preferred** workers.

(16) "Reserve" means the Workers' Reemployment Reserve prior to July 1, 1990, and Reemployment Assistance Reserve thereafter.

[10] **(17)** "Section" means the Rehabilitation Review Section of the Workers' Compensation Division of the Department of Insurance and Finance.

[12] **(18)** "Substantial obstacle" means a permanent physical or mental impairment resulting from a disabling, compensable injury **or occupational disease**, which limits or prevents a worker from engaging in suitable permanent employment.

[13] **(19)** "Wages" mean the money rate at which the service rendered is recompensed under the contract of hiring, not including commission, tips, overtime, paid vacation, paid sick leave, other paid leave, board, housing, rent or other remuneration.

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436-110-006 Rehabilitation Review Section

The Rehabilitation Review Section is charged with assuring that **preferred** [injured] workers, [and] employers **and insurers** receive reemployment assistance pursuant to ORS 656.622 and these rules; and, maintaining the integrity of the Reserve [Department's reimbursement of reemployment assistance costs].

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436-110-010 Policy Governing [Assistance from] the [Workers'] Reemployment Assistance Reserve

(1) Assistance to employers from the [Workers' Reemployment] Reserve shall be provided in order to encourage employers to reemploy or hire **preferred** workers [who have a substantial obstacle to suitable employment].

(2) All employment for which reemployment assistance is granted shall be suitable employment.

(3) All reemployment assistance is subject to the conditions set forth in these rules.

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436-110-015 Limitation of Program

(1) Reimbursement shall be limited to the money available in the Reserve.

(2) In the event of insufficient funds in the Reserve, the Director shall have final authority to determine an equitable distribution which will proportionately distribute the available funds among the claims having qualified for reimbursement.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-020 Criteria for Granting Reemployment Assistance [from the Workers' Reemployment Reserve]; Eligibility and Ineligibility of Workers and Employers

[An employer and worker are eligible for assistance from the Workers' Reemployment Reserve when the employer agrees to reemploy or hire the worker, the worker and employer are in compliance with all applicable state and federal statutes regarding employment, and:]

[(1) As a result of the injury the worker has not successfully returned to suitable employment and will not be able to return to the employment the worker held at the time of injury or the claim for aggravation, or the worker's customary employment.]

(1) A worker is eligible for assistance from the Reserve when:

[(2) **(a)** The worker has a substantial obstacle to employment resulting from the injury, and [there is]:

[(a) **(A)** [A preponderance of] **Documented** medical evidence [which] indicates the disability [would appear to] **will** be permanent; or

[(b) **(B)** The worker has **a Notice of Closure**, a Determination Order, **Order on Reconsideration**, Order of a Referee, Order on Review by the Board[,] **or a** decision of the Court of Appeals or an approved stipulation which grants permanent disability[.]; **and**

(b) The worker has not returned to regular or other suitable employment and will not be able to return to regular employment; and

(c) The worker has not refused suitable employment.

(2) An employer is eligible for assistance from the Reserve when the employer agrees to reemploy or hire the worker in suitable employment, the employer has workers' compensation insurance coverage and complies with all other state and federal statutes regarding employment.

(3) A worker is not eligible for reemployment assistance **or eligibility for assistance will end** if the worker has :[intentionally misrepresented a matter material to the provision of reemployment assistance.]

(a) Misrepresented or omitted information in order to obtain assistance, or

(b) Failed to provide requested information or to cooperate in the provision of

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assistance.

(4) An employer is not eligible for reemployment assistance **or eligibility for assistance will end** if:

(a) The employer intentionally misrepresents a claim for reimbursement of wages or submits reimbursement claims prior to paying the costs.

(b) The employer fails to provide or maintain Oregon workers' compensation insurance.

(c) The employer has established a pattern of terminating workers within 60 days after completion of the agreement.

(d) The employer fails to abide by any other provision of a reemployment assistance agreement, or these rules.

(5) An employer hiring a relative, patient, client, corporate officer or their relative, shareholder or other person with whom they have a relationship other than a usual employer-employees relationship, [are] **is** not eligible for reemployment assistance without prior administrative approval.

(6) An employer failing to comply with these rules may be barred from receiving reemployment assistance for a period prescribed by the Director.

(7) A worker or employer is not eligible for reemployment assistance that will not overcome a substantial obstacle to employment, and is impractical or unfeasible as determined by the Division.

(8) A worker's and employer's eligibility for reemployment assistance will end if the worker returned to suitable employment and then changed jobs to employment which was not suitable.

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436-110-030 Preferred Worker Cards

(1) The Division will issue preferred worker cards to workers identified as eligible for reemployment assistance, pursuant to OAR 436-110-020(1).

(2) In order for the Division to issue the worker a preferred worker card, the insurer shall submit a Closure Summary, Form 2195, to the Division when one of the following occurs:

(a) Upon submitting a Notice of Closure, Form 1644, reporting permanent disability; or,

(b) Upon submitting an insurer's Determination Request, Form 1503; or,

(c) Within ten (10) calendar days from the insurer's receipt of the earliest Opinion

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and Order of a Referee, Order on Reconsideration, Order on Review by the Board, decision of the Court of Appeals or stipulation which grants initial permanent disability after the latest opening of the worker's claim.

(3) When requested, a card may be issued prior to claim closure when medical documents show that impairment resulting from the injury will cause permanent disability. The request must confirm that the eligibility criteria in OAR 436-110-020(1) have been met.

(4) The card expires upon the preferred worker's return to work. The worker shall give the preferred worker card to the employer when the employer agrees to hire the worker. The employer shall return the card to the Division upon agreeing to hire the worker and before reemployment assistance begins.

(5) A card expires if any of the conditions of ineligibility or for ending eligibility cited in OAR 436-110-020 apply.

(6) A card may be reissued if reemployment assistance was ended in error.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-035 Kinds and Conditions of Reemployment Assistance

The following kinds of reemployment assistance are available under the conditions set forth in this rule:

(1) Wage subsidy. A wage subsidy reimburses an employer for a portion of a preferred worker's wages for a specified period. A wage subsidy shall be limited in duration to six months, and shall not exceed a monthly rate of 50 percent reimbursement of wages paid by the employer, other than for a worker with an exceptional disability. "Exceptional disability" means a disability equivalent to the complete loss, or loss of use, of two or more limbs. The determination of whether a disability is exceptional requires administrative approval. In no case shall reimbursement exceed 75 percent of the wages paid in any one month.

(2) Worksite modification. A worksite modification alters the configuration of a worksite, or involves purchasing, modifying or supplementing equipment to enable a preferred worker to work within the limitations imposed by an injury. A worksite modification shall be limited in any one case to \$15,000, other than for a worker with an exceptional disability. A worksite modification in excess of \$1,000 requires prior administrative approval. Other conditions under OAR 436-110-090⁽⁵⁾**(2)**^(g) **(f)** and ⁽⁶⁾**(3)** also apply. A worksite modification may include one or more of the following elements:

^(A) **(a)** Provision of tools, equipment, fixtures or furnishings; installation of equipment or machinery; or alteration of permanent structures, beyond that which would customarily be provided by an employer to all employee and which would normally be a component of the worksite.

^(B) **(b)** Engineering, architectural, ergonomic and other professional consultive services to determine the feasibility of, or design, worksite modifications.

⁽³⁾ Premium relief. Premium relief provides the following assistance to the employer:]

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[(a) The employer who hires a preferred worker will receive reimbursement of the premium for that worker for the first two years from the date of hire; and,]

[(b) The employer shall not incur any increase in premium, or decrease in dividend otherwise due, as a result of an injury sustained by a preferred worker within two years after the date of hire.]

[(4)] **(3)** Obtained employment purchases. Obtained employment purchases are limited to those services and items an employer requires of a preferred worker as a condition of employment, or required for the worker to be able to accept the employment. This assistance is restricted to workers who are not eligible for vocational assistance under OAR 436-120, and are not receiving temporary total disability compensation. Obtained employment purchases are limited to the following:

(a) Tuition, books and fees for a class or course of instruction may be provided to meet the requirements of an obtained job. Payment is limited to \$500 for this category.

(b) Tools and equipment required for obtained employment shall be limited to those items mandatory for initial employment, such as starter sets. Purchases shall not include what the employer would normally provide, what the worker possess; or, if provided in conjunction with worksite modification, duplicate items provided as part of such modification. Payment is limited to \$1500 for this category.

(c) Clothing required as a condition of obtained employment. Purchases shall not include what the employer would provide. Payment is limited to \$300 for this category.

(d) Moving expenses. Payment requires that the worker have obtained employment outside commuting distance. Payment shall be limited to covering the cost of household goods weighing not more than 10,000 pounds and, if necessary, paying reasonable costs of meals and lodging for the worker's family. Payment for moving expenses, and mileage for one vehicle at \$.21 per mile, is limited to a single one-way trip. In determining the necessity of paying moving expenses the department shall consider the possible availability of employment which does not require moving, or which requires less than the proposed moving distance.

(e) Rental allowance for primary residence. This allowance shall be limited to first and last month's rent, and requires the worker to have been required to move outside normal commuting distance to accept employment.

(f) Dues and fees of a labor union. Payment shall be limited to initiation fees, or back dues and one month's current dues, of a labor union which is the bargaining agent for the employment obtained by the worker.

(4) Premium exemption/claim cost reimbursement. Premium exemption/claim cost reimbursement will only be approved when the worker starts suitable employment on or after July 1, 1990. Conditions for such assistance include:

(a) An employer reemploying or hiring a preferred worker shall not be required to report payroll on that worker for calculation of insurance premiums or premium assessments for three years from the hire date.

(b) Premium exemptions/claim cost reimbursements will be approved for one employer only and is not transferable to another employer.

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(c) Premium exemption/claim cost reimbursement will apply only to the initial job for which the employer requested premium exemption. Before a worker changes job duties or begins a new job with the same employer, a new job analysis must be completed for the premium exemption agreement to remain in effect, as prescribed in OAR 436-110-040(2).

(d) If a preferred worker incurs a compensable injury or occupational disease while in a suitable job during the first three years from the hire date, claim costs are reimbursable as prescribed in OAR 436-110-050.

(e) The employer shall start paying insurance premiums and premium assessments beginning the date premium exemption assistance ends.

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436-110-036 Premium Relief

(1) Premium relief agreements approved by the Division. In accordance with rules adopted under WCD Administrative Order 12-1987, shall remain in effect under the terms and conditions of the agreement until the end of the agreement.

(2) Premium relief agreements in process prior to July 1, 1990 will only be approved when the worker started suitable employment prior to July 1, 1990.

(3) Premium Relief assistance has the following limitations:

(a) Agreements are not convertible or transferable to premium exemption assistance.

(b) Agreements cannot be extended for a third year of premium relief or premium exemption.

(c) Compensable injuries sustained by a worker during the period of premium relief assistance are not subject to claim cost reimbursement.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-040 Filing and Continuation of Agreements

(1) Reemployment assistance may be provided when the employer agrees to reemploy or hire the preferred worker in suitable employment. The following conditions apply:

(a) The worker must inform the employer of the worker's physical capacities.

(b) The employer completes a job analysis for the job offered and signs the job analysis. The worker reviews and signs the job analysis if the job offered is within the worker's physical capacities.

(c) If the worker or employer is uncertain of the physical suitability of the job, the job analysis may be submitted to the worker's attending or primary care physician for approval. If the worker has neither an attending physician nor a primary care physician, the worker's at-injury insurer may select a physician from its managed care organization. The physician's charges for review of the job analysis shall be paid by the worker's at-

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injury insurer.

(d) The employer and worker must sign the job analysis and Premium Exemption/Wage Subsidy Agreement prior to the worker starting work.

(e) The employer shall send the signed job analysis, Premium Exemption/Wage Subsidy Agreement and any request for worksite modification or obtained employment purchases to the Division.

(f) Upon receipt of the materials from the employer, the Division will determine if:

(A) Further documentation is required to approve the assistance requested, or

(B) Additional assistance is to be provided, or

(C) The assistance requested can be approved.

(g) All parties will be notified of the Division's determination.

(2) Job changes with the same employer require a new job analysis showing suitability of employment, for premium exemption to continue.

(a) Both the employer and worker must sign the job analysis, attesting the job is within the worker's physical capabilities.

(b) If the worker or employer is uncertain of the physical suitability of the job for the worker, the job analysis may be submitted to the worker's attending physician or primary care physician for approval.

(c) The employer must send the completed job analysis to the insurer. The insurer must confirm that the physical requirements of the job do not exceed the worker's physical capabilities. The insurer must keep the signed job analysis on file.

(3) Reemployment assistance requests, agreements and supporting information shall be in the format prescribed by the Director.

(4) Agreements and supporting information shall be filed with the Division within ten (10) days of signatures by the parties.

(5) The employer shall notify the Division in writing when any agreement has been terminated by the employer prior to its originally scheduled completion date. Such notice shall be accompanied by the final reimbursement request.

Hist: Filed 6/21/90 as Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-042 Premium Exemption: Insurer Notice and Insurer Responsibilities

(1) Within ten (10) days of receipt of notice of premium exemption approval by the Division, the employer's insurer must notify the employer in writing of the following employer responsibilities:

(a) To continue the preferred worker in suitable employment for three years from the hire date. Employment shall be subject to the employer business practices, economic conditions and the availability of suitable employment; and

(b) To notify the insurer of any internal job change by the preferred worker in the

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first three years from the hire date, to continue premium exemption assistance. This notice must include the requirement that the employer provide the insurer with a job analysis for each new job. The insurer shall instruct the employer that each new job analysis must be signed by the employer and worker attesting that the job analysis is accurate and that the job is within the worker's physical capabilities.

(2) If the insurer failed to notify the employer of the responsibilities cited in (1), and the worker's job was found unsuitable upon audit, claim costs are not reimbursable. In this case, claim costs shall not be charged back to the employer.

(3) If the employer was given notice but failed to perform the responsibilities cited in (1), and the job was found unsuitable upon audit, claim costs may be charged back to the employer.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-045 Claim Cost Reimbursement Eligibility

(1) To qualify for reimbursement of claim costs from the Reserve the following conditions must be met:

(a) The worker was declared a preferred worker by the Division and was employed with an employer receiving premium exemption assistance at the time of injury.

(b) The preferred worker has sustained a compensable injury or occupational disease within three years of the hire date.

(2) The worker must be performing a suitable job at the time of injury.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-050 Process for Claim Cost Reimbursement:

(1) Reimbursement shall be made by the Department on a quarterly basis after receipt and approval of documentation of compensation paid by the insurer.

(2) The Division shall prescribe by bulletin the documentation required to support reimbursement and the form and format for reporting reimbursement. Documentation shall include, but is not limited to:

(a) Net amounts paid, separated into disability benefits and medical benefits. "Net amounts" means the total compensation paid less any recoveries including, but not limited to: third party recovery, retroactive reserve reimbursement or reopened claims reserve.

(b) Payment certification statement; and

(c) Any other information deemed necessary by the Division.

(3) Requests for reimbursement shall not include:

(a) Costs incurred for conditions unrelated to the compensable claim;

(b) Costs incurred due to inaccurate, untimely, or improper processing of the claim;

(c) Administrative or expense costs including penalties, fines and filing fees;

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(d) Disposition amounts in accordance with ORS 656.236 and 656.289, not prior approved by the Division; and

(e) Costs reimbursed or requested for reimbursement from the Handicapped Workers' Reserve, Reopened Claims Reserve, Retroactive Reserve or any other reserve.

(4) Periodically the Division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts shall be refunded to the Division and, as applicable, future reimbursements denied if upon audit any of the following is found to apply:

(a) Reimbursement has been made for any of the items cited in subsection (3) of this rule:

(b) The separate payments of compensation have not been documented, as required under generally accepted accounting procedures.

(c) The insurer included claim costs in any dividend, retrospective rating or any claim valuation for experience rating calculations.

(d) The insurer is unable to provide applicable records relating to experience rating, retrospective rating or dividend calculations at the time of audit or within ten (10) working days thereafter.

(5) If a compensable claim is later denied, the insurer shall receive reimbursement for claim costs in accordance with these rules, while the claim was in accepted status.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-052 Claim Cost Reimbursement: Effect on Rates

(1) An insurer receiving claim cost reimbursement shall not report the subject claim for ratemaking, individual employer rating or dividend calculations. In addition, the insurer must be able to document that such reimbursed costs are not included in data reported that will affect the employer's rates or dividend eligibility.

(2) The insurer receiving claim cost reimbursement shall not include those costs in any process, calculation or report that would increase the employer's premium or premium rate, or decrease any dividend otherwise due the employer.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-055 Preferred Worker Claim Dispositions

(1) Any disposition of the claim by the parties pursuant to ORS 656.236, or settlement of the claim pursuant to ORS 656.289, is not eligible to receive reimbursement from the Reserve unless made with the prior written approval of the Division.

(2) The insurer shall submit the proposed disposition to the Division for approval prior to submitting the proposed disposition to the Board. "Board" means the Workers' Compensation Board.

(3) A request for written approval of the proposed disposition shall include:

(a) A copy of the proposed disposition which specifies the proposed assistance from

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the reserve and contains a signature line for Division approval.

(b) A statement from the insurer indicating how the contribution from the reserve was calculated.

(c) Other information as required by the Division.

(4) The insurer shall submit proposed dispositions to the Division in the format prescribed by the Division.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-060 End of Reemployment Assistance [Agreements] Other Than by Completion

(1) If [a] reemployment assistance [agreement] is prematurely ended by the employer for reasons beyond the worker's control, the worker may be eligible for further assistance from the [Workers' Reemployment] Reserve with prior administrative approval.

(2) If a wage subsidy is interrupted for reasonable cause, it may be extended for a period equal to the length of interruption.

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73
Amended 3/14/73 by WCB Admin. Order 3-1973, eff. 4/1/73
Amended 9/29/77 as WCD Admin. Order 2-1977 (Temp.), eff. 10/4/77
Amended 2/1/78 as WCD Admin. Order 2-1978, eff. 2/1/78
Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82
Renumbered from OAR 436-63-045, 5/1/85
Amended 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
Amended 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-080 Resolving Reemployment Assistance Disputes; Appeal to the Director

[(1) If an employer, worker or insurer is aggrieved by a decision of the Section, the aggrieved party may request a review by the Director.]

(1) Any party as defined by ORS 656.005(20), including SAIF Corporation as a designated processing agent pursuant to ORS 656.054 and the potential employer of a preferred worker, aggrieved by an action taken pursuant to these rules or any proceeding resulting therefrom, may request an administrative review by the Director. The process for administrative review shall be as follows:

(a) The request for review shall be sent to the Administrator of the Workers' Compensation Division. No review shall be granted unless the request specifies the grounds and is received by the Division within thirty (30) days of the action or from the date of the mailing or other service of a decision.

(b) The review will be performed by the Director or the Director's designee.

(c) The Director's decision will be made in writing. Pursuant to ORS 656.622, all decisions of the director are final and not subject to further review by any court or other administrative body.

[(2) Pursuant to ORS 656.622(2), the Director's decision shall be final and not subject to review by any court or other administrative body.]

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88

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Amended 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-090 [Filing of Agreements;] **Advancement of Funds and Reimbursement of Wage Subsidy, Worksite Modification and Obtained Employment Purchase** [Reemployment Assistance] **Costs**

[(1) Reemployment assistance requests, agreements and supporting information shall be in the format prescribed by the Director.]

[(2) A Workers' Reemployment Reserve agreement shall be filed with the Department within ten days after obtaining the signatures of the parties, accompanied by the supporting information.]

[(3) The employer shall notify the Department in writing when any agreement has been terminated by the employer prior to its originally scheduled completion date. Such notice shall be accompanied by the final reimbursement request.]

[(4) **(1)** In the absence of the employer's or insurer's ability to pay, nothing in these rules precludes the Department from advancing funds to enable the employer to perform a worksite modification or make an obtained employment purchase. In no case shall the Department directly purchase or otherwise assume responsibility for worksite modifications or obtained employment purchases. Prior administrative approval is required in all such instances.

[(5) **(2)** The following procedures and conditions apply to reimbursing or advancing funds for costs of reemployment assistance:

(a) Reimbursement or advancement of funds shall be made only for reemployment assistance provided in accordance with these rules. Reimbursement under these rules shall not be made for vocational assistance under OAR 436-120.

(b) Reimbursement or advancement of funds will be made only after the agreement has been filed and approved. Requests for reimbursement or the advancement of funds shall be made in the manner prescribed by the Director.

[(c) The Department will reimburse or advance funds for costs of reemployment assistance, subject to the availability of funds.]

[(d) **(c)** Reemployment assistance costs must be paid before reimbursement is requested.

[(e) **(d)** Reimbursed costs shall not be charged by the insurer to the employer as claim costs or by any other means. Whenever reimbursement is denied, the insurer shall not [change] **charge** the costs of the reemployment assistance to the insured employer, worker or the new employer.

[(f) **(e)** Reimbursement requested before the employer has paid the costs is subject to denial or recovery by the Department. Insurers requesting reimbursement prior to paying the costs are subject to denial or recovery, in addition to any penalties under ORS chapter 656.

[(g) **(f)** Further procedures and conditions relating to reimbursement for worksite modification costs and obtained employment purchases are as follows:

(A) If the cost for a single item is over \$1,000, three competitive quotes shall be obtained. If three quotes are not available, documentation of efforts to obtain three quotes shall be made (i.e., sole source). The lowest quote shall normally be selected.

(B) Multiple orders to circumvent the requirements of this section shall not be issued.

[(6) **(3)** If prior to the termination of a worksite modification agreement, the employer

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fails to meet any conditions prescribed for the care and protection of property in the employer's custody, and the property suffers damage or loss, the employer shall not be compensated for repair or replacement of the property.

[(7)] **(4)** If prior to the termination of an agreement under these rules, the worker fails to adequately care for and protect property provided under OAR 436-110-035[(4)]**(3)**, and the property suffers damage or loss, the worker shall not be compensated for repair or replacement of the property.

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Amended 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

[436-110-095 Requirements of Insurers, Employers and Ratemaking Organizations Under Premium Relief]

[The following provisions apply to employers, the Department, insurers and ratemaking organizations licensed pursuant to ORS chapter 737, to provide premium relief under OAR 436-110-035(3):]

[(1) Total claims costs incurred as a result of any injury sustained by a preferred worker within two years after that worker is hired shall not be included in any process, calculation or report that could increase the employer's premium or premium rate, or decrease any dividend otherwise due the employer.]

[(2) Employers are responsible for notifying their insurers of the employment of each preferred worker for which they are receiving premium relief, and the duration of the preferred worker's status, by submitting a copy of the preferred worker agreement to the insurer. Notification shall be made at the time the employer applies for workers' compensation insurance or within 10 days of hiring a preferred worker where insurance is in effect at the time of hiring.]

[(2) In determining premium costs for a self-insured employer or employer on a retrospective rating plan, the Department shall simulate a premium for the preferred worker by using the published rates for self-insured employers and by using a standard insurance plan.]

Hist: Filed 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Repealed 6/21/90 by WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)

436-110-100 Audits

(1) Insurers and employers are subject to periodic program and fiscal audits by the Department. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements may be recovered by the Department directly or from future reimbursements by way of offset. If the Department finds upon audit that procedures which led to disallowed reimbursements are still being used, the Department may withhold further reimbursements until corrections satisfactory to the Department are made.

(2) The insurer shall maintain case files, records, reports, receipts and canceled checks documenting reemployment assistance costs for which reimbursement has been requested by the insurer. These records shall be maintained in accordance with OAR 436-50 or for a period of three years after the last reimbursement request.

(3) The Department reserves the right to visit the worksite to determine compliance with the agreement under which reemployment assistance has been provided.

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/1/87
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436-110-110 Sanctions

If the Director finds that a vocational assistance provider authorized pursuant to OAR 436-120 or an insurer misrepresented information in order to obtain reemployment assistance, or made a serious error or omission which results in Rehabilitation Review Section approving a [Workers'] Reemployment Assistance Reserve agreement **in error**, the Director may do one or both of the following:

(1) Order the insurer or vocational assistance provider to assume all or part of the financial obligation for the agreement;

(2) Prohibit an individual certified under OAR 436-120, a vocational assistance provider or an insurer from negotiating or arranging [Workers'] Reemployment Assistance Reserve agreements for such period the Director deems appropriate.

Hist: Filed 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
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436-110-120 Civil Penalties

The Director, through the Division and pursuant to ORS 656.745 may assess civil penalties against an insurer. When the Division imposes a penalty under this section, the Order shall be issued in accordance with ORS 656.447, ORS 656.704 and the contested case provisions of the Administrative Procedure Act (ORS Chapter 183).

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990, eff. 7/1/90 (Temporary)