

**ADMINISTRATIVE ORDER NO. 30-1990
EFFECTIVE DECEMBER 26, 1990**

**OREGON DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110**

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 under authority of ORS 656.622 and ORS 656.726(3).

(2) An order of the Workers' Compensation Division issued under the Director's authority to administer ORS chapter 656, and rules adopted under that chapter, is an order of the Director.

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73
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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 (Temp.), eff. 7/1/90
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-002 Purpose of Rules

Pursuant to ORS 656.622, the purpose of these rules is to prescribe for Oregon insurers, subject employers and workers:

- (1) Terms of eligibility for reemployment assistance.
- (2) Nature and extent of reemployment assistance available through the Reserve.
- (3) Criteria for payment and reimbursement of reemployment assistance costs to insurers and employers from the reserve created in ORS 656.622.
- (4) Terms and conditions for providing early return-to-work education.
- (5) Terms and conditions for establishing Early Return-to-Work Pilot Programs.

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
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436-110-003 Applicability of Rules

(1) These rules govern all requests for assistance from the Reserve filed with the Director on and after December 26, 1990 except for assistance to sheltered workshops as provided in ORS 656.530.

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

(3) 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.

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73
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Amended 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
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Amended 6/21/90 as WCD Admin. Order 13-1990 (Temp), eff. 7/1/90
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-005 Definitions

(1) "Administrator" means the Administrator of the Workers' Compensation Division, Department of Insurance and Finance or the Administrator's delegate.

(2) "Claim cost reimbursement" means reimbursement to the insurer from the Reserve for claim costs incurred by a preferred worker hired using the Preferred Worker Program.

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

(4) "Condition of hire" means the employer requires reemployment assistance be provided prior to, or at, the time the worker starts work in order to reemploy or hire the worker.

(5) "Cooperative Agreement" means a written agreement between any agency of the State of Oregon, that provides vocational assistance, and the Division which specifies the terms and conditions of services to be provided to injured workers. The agreement authorizes the agency to provide Reemployment Assistance Reserve services for eligible workers.

(6) "Department" means the Department of Insurance and Finance.

(7) "Director" means the Director of the Department of Insurance and Finance or the Director's delegate.

(8) "Disposition" or "claim disposition" means the written agreement as provided in ORS 656.236, executed by all parties in which a worker agrees to release rights, or agrees to release an insurer from obligations under ORS 656.001 to 656.794, except for medical services, in an accepted claim. The term "compromise and release" has the same meaning.

(9) "Division" means the Workers' Compensation Division of the Department of Insurance and Finance.

(10) "Division approval" means approval by the Administrator of the Workers' Compensation Division.

(11) "Early return-to-work education" is instruction to an employer or insurer to help establish reemployment programs to return workers to work after injury.

(12) "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 organization in whose employ the worker sustained the injury or occupational disease, or made the claim for aggravation, whichever gave rise to the need for reemployment assistance.

(13) "Exceptional disability" means a disability equivalent to the complete loss, or loss of use of, two or more limbs. The determination of whether a worker has an exceptional disability requires prior Division approval.

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

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(15) "Insurance premium" means payroll multiplied by the insurer's filed rates and the employer's experience rating modification.

(16) "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.

(17) "Modified employment" is any employment, including regular employment, requiring substantial job duty alteration or substantial worksite modification approved by the Division to conform to the worker's permanent limitations.

(18) "Obtained employment purchases" means those services and items, as described in OAR 436-110-045(5), an employer requires of all workers for employment, and is required for a preferred worker to accept an available job.

(19) "Part-time employment" means any combination of workdays or hours of less than 40 hours per week or as prescribed by company policy or bargaining unit agreement.

(20) "Permanent employment" means employment subject to the employer's business practices and policies, collective bargaining agreement(s), applicable statutes and economic conditions. It may be full-time, part-time or seasonal employment and is expected to last indefinitely.

(21) "Preferred worker" means a subject Oregon worker as described in ORS 656.005(26) and ORS 656.027 who, because of a permanent disability resulting from a compensable injury or occupational disease is unable to return to regular employment, and meets the Preferred Worker Program eligibility criteria for assistance under these rules.

(22) "Preferred Worker Program" means premium exemption and claim cost reimbursement provided to eligible employers and their insurers to encourage the reemployment or hire of preferred workers.

(23) "Premium assessment" means the moneys due the Department under ORS 656.612 and ORS 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.

(24) "Premium exemption" means that an employer hiring a preferred worker does not pay workers' compensation insurance premiums or premium assessments for that worker.

(25) "Premium exemption period" means the three year period beginning the first date of hire that premium exemption is required by an employer as a condition of hiring the preferred worker.

(26) "Prior Division approval" means that approval, or a waiver under OAR 436-110-003(2), must be secured before any commitment is made to provide assistance governed by these rules.

(27) "Reemployment assistance" means any of the goods and services under these rules to help employers reemploy or hire eligible workers.

(28) "Reemployment assistance provider" means an insurer or vocational rehabilitation organization authorized under OAR 436-120 to provide assistance, or a state agency with an active cooperative agreement with the Division to provide assistance.

(29) "Regular employment" means the job the worker held at the time of injury or claim for aggravation, or employment substantially similar in nature, duties, responsibilities, knowledge, skills and abilities.

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(30) "Reserve" means the Reemployment Assistance Reserve.

(31) "Return-to-Work Incentives Program" means wage subsidy, worksite modification and obtained employment purchases provided to eligible employers to encourage the reemployment or hire of eligible workers.

(32) "Seasonal employment" means employment characterized by periods of employment followed by periods of unemployment occurring in a yearly cycle.

(33) "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 employment.

(34) "Suitable employment" means permanent employment for which the worker has the physical capacities, knowledge, skills and abilities. For the purposes of this subsection:

(a) "Knowledge" means an organized body of 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 capacity to apply knowledge and skills.

(35) "Wages" means the money paid for services performed under the terms of employment, including paid leave, but not including commission, tips, overtime, board, housing, rent, bonuses or other remuneration.

(36) "Wage subsidy" means partial reimbursement of a preferred worker's wages to the employer for a specified period.

(37) "Worksite modification" means altering a worksite by purchasing, modifying or supplementing equipment, or changing the work process to enable a worker to work within the limitations imposed by a compensable injury or occupational disease.

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436-110-006 Workers' Compensation Division

The Division maintains the financial integrity of the Reserve and assures that eligible workers, employers and insurers receive reemployment assistance pursuant to ORS 656.622 and these rules.

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436-110-010 Policies Governing the Reemployment Assistance Reserve

(1) Assistance from the Reserve shall be provided to encourage employers to reemploy or hire eligible workers.

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(2) Assistance from the Reserve shall be granted only under conditions set forth in these rules.

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436-110-015 Funding Limitations of the Program

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

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

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436-110-017 Notice Requirements

Pursuant to ORS 656.340 the insurer shall inform a worker of the assistance available from the Reserve at the time of acceptance of the claim or claim for aggravation, upon release for work by the attending physician or primary care physician, and upon determination of the worker's eligibility for vocational assistance under OAR 436-120.

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436-110-020 Preferred Worker Program; Eligibility and Ineligibility of Workers and Employers

(1) The Preferred Worker Program consists of the following:

(a) Determining worker eligibility and issuing a preferred worker card to an eligible worker to aid in obtaining employment;

(b) Providing an eligible employer who reemploys or hires a preferred worker premium exemption on that worker for up to three years from the date premium exemption is first used as a condition of hire; and,

(c) Providing claim cost reimbursement to the eligible employer's insurer for any compensable injury or occupational disease the worker incurs during the premium exemption period.

(2) A worker is eligible for the Preferred Worker Program when:

(a) The worker has not returned to, and medical evidence indicates the worker will not be able to return to, regular employment as a result of a compensable injury or occupational disease;

(b) The worker has not refused suitable employment with the employer-at-injury; and,

(c) Under the latest opening of the claim:

(A) The worker has a Notice of Closure, a Determination Order, Order on Reconsideration, Order of a Referee, Order on Review by the Board, a decision of the Court of Appeals or an approved stipulation which grants permanent disability; or,

(B) The worker has available, immediate employment and documented medical evidence

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indicates permanent disability will be awarded at the time of claim closure.

(3) An employer is eligible for the Preferred Worker Program when the employer agrees to reemploy or hire a preferred worker. The employer must have workers' compensation insurance and comply with all applicable state and federal statutes regarding employment.

(4) An employer is not eligible for premium exemption when the worker returns to regular employment unless, as a result of the compensable injury or occupational disease, substantial job duty alteration is needed or substantial worksite modification is required as determined by the Division.

(5) A worker is not eligible for the Preferred Worker Program, or eligibility for assistance will end, if the worker:

- (a) Misrepresents or omits information in order to obtain assistance;
- (b) Fails to provide requested information or cooperate in the provision of assistance; or,
- (c) Falsifies or alters a preferred worker card.

(6) An employer is not eligible for the Preferred Worker Program, or eligibility for assistance will end, if the employer fails to provide or maintain Oregon workers' compensation insurance.

(7) A worker is not eligible for reemployment assistance when the parties release all permanent disability and dispose of the claim pursuant to ORS 656.236, or settle the claim pursuant to ORS 656.289.

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436-110-022 Preferred Worker Cards

(1) The Division will issue two preferred worker cards to workers identified as eligible for the Preferred Worker Program.

(2) The first card, a Preferred Worker Identification Card, will be issued by the Division when permanent disability from the injury is awarded and the worker is eligible as cited in OAR 436-110-020. 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 30 calendar days from the insurer's receipt of the earliest Opinion 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) A Preferred Worker Identification Card will be issued by the Division prior to an award for permanent disability when the worker has available, immediate employment and documented medical evidence indicates permanent disability will be awarded at the time of claim closure. The Division will determine the probability of permanent disability. A Preferred Worker Identification

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Card shall be requested as follows:

(a) For workers receiving vocational assistance under OAR 436-120, a written request for a Preferred Worker Identification Card and information supporting eligibility shall be sent to the Division by the insurer;

(b) Workers not receiving vocational assistance under OAR 436-120 may contact the Division directly and request a Preferred Worker Identification Card.

(4) A Preferred Worker Identification Card expires three years from the date of issue.

(5) The worker must give the Preferred Worker Identification Card to the first employer receiving premium exemption.

(6) The first employer hiring the worker and receiving premium exemption must provide to the Division the information requested on the Preferred Worker Identification Card. The card must be signed and dated by the worker and employer no later than 14 days after the hire date. The card must be mailed to the Division no later than seven days after the last signature.

(7) Upon receipt of a completed Preferred Worker Identification Card, the Division will issue the worker a second card, a Preferred Worker Eligibility Card, which shows the premium exemption period.

(8) At the time a Preferred Worker Eligibility Card is issued, the Division will:

(a) Send a Notice of Premium Exemption to the employer, its insurer and the insurer of the employer-at-injury; and,

(b) Send a Notice of Premium Exemption to the worker which also informs of the procedures for resolving any dissatisfaction regarding the Preferred Worker Program.

(9) A Preferred Worker Eligibility Card may be used by the worker to obtain new employment and to provide subsequent employers premium exemption and claim cost reimbursement for the remainder of the three year premium exemption period.

(10) Employers who subsequently hire the preferred worker shall copy the Preferred Worker Eligibility Card as evidence of premium exemption and claim cost reimbursement eligibility. The card shall be returned to the worker and the copy kept on file by the employer.

(11) An employer subsequently hiring a worker with a Preferred Worker Eligibility Card must notify its insurer that a preferred worker has been hired.

(12) A Preferred Worker Eligibility Card expires at the end of the premium exemption period and may not be extended. A card may be reissued upon loss or destruction of the original card during the premium exemption period.

(13) The Division will end preferred worker eligibility and cancel any preferred worker card if any of the following conditions apply:

(a) The preferred worker card was issued in error;

(b) The worker has not returned to work and the claim is closed without permanent disability; and,

(c) Any conditions of ineligibility or for ending eligibility cited in OAR 436-110-020(5).

(14) The Division will notify the worker of the end of eligibility or cancellation of a preferred

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worker card.

(15) Workers issued preferred worker cards between July 1, 1990 and the effective date of these rules shall, upon request to the Division, be issued a new card. A Preferred Worker Identification Card will be issued to those workers who have not returned to work. A Preferred Worker Eligibility Card will be issued for the remainder of the three years of premium exemption to those workers who have returned to work and used premium exemption as a condition of hire. Those workers are subject to these rules.

Hist: Filed 12/10/90 as WCD Admin Order 30-1990, eff. 12/26/90

436-110-025 Conditions of Premium Exemption

(1) The general requirements for Premium Exemption are:

- (a) The worker is eligible for the Preferred Worker Program;
- (b) The employer is eligible as cited in OAR 436-110-020(3);
- (c) The preferred worker is returning to modified or new employment; and,
- (d) The assistance must be a condition of hire.

(2) The following conditions apply to Premium Exemption:

(a) Premium exemption shall be provided only for the three year period shown on the Preferred Worker Eligibility Card.

(b) 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 until the expiration date shown on the Preferred Worker Eligibility Card;

(c) An employer reemploying or hiring a preferred worker is required to report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-085-10.

(d) When auditing, the employer's insurer shall not use the payroll of the preferred worker for determination of the employer's premium or premium assessment;

(e) Premium exemption assistance cannot be extended to exceed the three year premium exemption period;

(f) Premium exemption may be provided with prior Division approval for the worker's regular employment only when substantial job duty alteration is necessary or substantial worksite modification is required to accommodate the worker's permanent limitations as a result of the injury;

(g) If a preferred worker incurs a compensable injury or occupational disease during the premium exemption period, the employer shall notify the insurer of the injury and write "preferred worker" in the left-hand margin of Form 801, and provide a copy of the worker's Preferred Worker Eligibility Card. If the employer fails to write "preferred worker" on Form 801, or fails to send a copy of the Preferred Worker Eligibility Card, the employer shall notify the insurer as soon as possible that the injury or disease was incurred by a preferred worker. When this occurs the insurer must correct all records previously filed which include claim costs in any dividend, retrospective rating or any claim valuation for experience rating performed; and,

(h) The employer shall start paying insurance premiums and premium assessments beginning

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the date premium exemption ends.

(3) Premium exemption may be provided to subsequent employers that meet the eligibility criteria cited in OAR 436-110-020(3) for the remainder of the three year premium exemption period.

(4) Notwithstanding the provisions of this rule, premium exemption will not be provided when an employer:

(a) Did not require premium exemption as a condition of hire of the preferred worker;

(b) Fails to complete and return to the Division the Preferred Worker Identification Card within the required period of time; or,

(c) Fails to copy the Preferred Worker Eligibility Card as proof of premium exemption upon employment of the preferred worker.

Hist: Filed 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-030 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 at the time of injury; and,

(b) The preferred worker has sustained a compensable injury or occupational disease within the premium exemption period.

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436-110-032 Process for Claim Cost Reimbursement

(1) Reimbursement of claim costs found eligible pursuant to OAR 436-110-030 shall be made by the Department on a quarterly basis after receipt and approval of documentation of compensation paid by the insurer. Reimbursements shall be made for the life of the claim subject to the funding limitations of the program as cited in OAR 436-110-015.

(2) Quarterly reimbursement requests must be in the format prescribed by Bulletin. Each insurer must submit a separate application for reimbursement. If the number of claims requested for reimbursement exceeds one page, the succeeding pages must be in the same format. The total amount requested for all pages must be entered and certified on page one of the request. 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) All requests for reimbursement should be made within one year from payment.

(4) Requests for reimbursement shall not include:

(a) Claim costs for the original injury, or an aggravation of the original injury, which qualified

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the worker as a preferred worker;

- (b) Costs incurred for conditions unrelated to the compensable claim;
- (c) Costs incurred due to inaccurate, untimely, or improper processing of the claim;
- (d) Administrative or expense costs including penalties, fines and filing fees;
- (e) Disposition amounts in accordance with ORS 656.236 and ORS 656.289, not previously approved by the Division;
- (f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Reserve, Retroactive Reserve or any other reserve.

(5) 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 (4) 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 14 working days thereafter;
- (e) The insurer failed to follow generally accepted claim management processes, procedures and practices; and,
- (6) If the conditions described in (5)(c) and (d) of this rule are corrected and all other criteria of the rules are met, then eligibility for reimbursement is reinstated.

(7) If a claim is denied, the insurer shall receive reimbursement for claim costs in accordance with these rules for periods preceding the denial.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990 (Temp), eff. 7/1/90
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436-110-035 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.

(2) An insurer receiving claim cost reimbursement shall exclude costs on that claim from any process, calculation or report that would increase the employer's premium or premium rate, or decrease any dividend otherwise due the employer.

(3) 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.

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436-110-037 Claim Dispositions From The Reserve For Claims Subject to Claim Cost

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Reimbursement

(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 reimbursable 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 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 the Reserve and contains a signature line for Division approval; and,

(b) Other information as required by the Division.

Hist: Filed 6/21/90 as WCD Admin. Order 13-1990 (Temp), eff. 7/1/90
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-040 Return-to-Work Incentives Program; Eligibility and Ineligibility of Workers and Employers

(1) A worker is eligible for return-to-work incentives when the worker has a preferred worker card and has available, suitable employment.

(2) An employer is eligible for return-to-work incentives when the employer agrees to reemploy or hire the preferred worker in suitable employment. The employer must have workers' compensation insurance and comply with all applicable state and federal statutes regarding employment.

(3) A worker is not eligible for return-to-work incentives, or eligibility for assistance will end if the worker:

(a) Misrepresents or omits information in order to obtain assistance; or,

(b) Fails to provide requested information or to cooperate in the provision of assistance.

(4) An employer is not eligible for return-to-work incentives, or eligibility for assistance will end if the employer:

(a) Intentionally misrepresents a claim for reimbursement of wages or submits reimbursement claims prior to paying the costs;

(b) Fails to provide or maintain Oregon workers' compensation insurance;

(c) Has established a pattern of three occurrences of unreasonably terminating workers within 60 days of completion of a Return-to-Work Incentive Agreement; or,

(d) Fails to abide by any other provision of a Return-to-Work Incentive Agreement, or these rules.

(5) An employer failing to comply with the provisions of a Return-to-Work Incentive Agreement or these rules will be ineligible for return-to-work incentives for a period ordered by the Director.

Hist: Filed 12/10/90 /as WCD Admin. Order 30-1990, eff. 12/26/90

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436-110-042 Criteria for Suitable Employment

(1) Return-to-work incentives shall be provided only for suitable employment. A job is considered suitable employment when it meets the following conditions:

- (a) The job must be within the worker's physical capacities as agreed to by the worker and employer and, if necessary, supported by documented medical evidence;
- (b) The worker has the basic knowledge, skills and abilities to perform the job as evidenced by the worker's education, work history including volunteer experience; and,
- (c) The employment must be permanent; however, the job may be full-time, part-time, or seasonal employment.

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436-110-045 Conditions of Return-to-Work Incentives

The following conditions apply to return-to-work incentives:

- (1) Return-to-work incentives must be a condition of hire at the time of hire and will not be provided retroactively.
- (2) Return-to-work incentives will be initiated only during the premium exemption period except as otherwise cited in OAR 436-110-045(4)(f) and (h). A worker may receive wage subsidy, worksite modification or obtained employment purchase assistance only once, individually or in any combination, with the initial or subsequent employers initiated during the premium exemption period.
- (3) Wage subsidy assistance may be provided under the following conditions:
 - (a) A Wage Subsidy Agreement is valid only when signed by an authorized representative of the Division;
 - (b) 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;
 - (c) A wage subsidy for a worker with an exceptional disability may be up to one year in duration and shall not exceed a monthly rate of 75 percent reimbursement of wages paid by the employer;
 - (d) If a wage subsidy is interrupted for reasonable cause, it may be extended for a period equal to the length of the interruption. Examples of reasonable cause include, but are not limited to, personal or family illness, death in the family or pregnancy of the worker;
 - (e) Wage subsidy interruption, extension and reimbursement shall be on a whole workday basis;
 - (f) A job change with the employer receiving wage subsidy requires that a new job analysis be completed when the physical demands of the new job exceed the physical demands of the initial wage subsidy job analysis. Filing the job analysis shall be as prescribed in OAR 436-110-050(2) and (3);
 - (g) Wages subject to reimbursement must have been paid to the worker, be within the prevailing wage range for that occupation, and the wage agreed to in the Return-to-Work Incentive Agreement.
 - (h) When a job change with the employer receiving wage subsidy occurs, the wage initially

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agreed upon shall be the wage used to compute reimbursement unless the new wage is lower. If the new wage is lower, the new wage shall be used to compute reimbursement;

(i) Requests for wage reimbursement shall be made no more frequently than once every two weeks; and,

(j) Wage subsidy support information must be in narrative form and provide the information cited in OAR 436-110-047(4).

(4) Worksite modification assistance may be provided under the following conditions:

(a) A Worksite Modification Agreement is valid only when signed by an authorized representative of the Division;

(b) A modification with a cost of up to \$25,000 may be allowed in any one claim. A modification with a cost in excess of \$25,000 may be provided for a worker with an exceptional disability;

(c) A modification with a cost of up to \$2,500 must be written on a Worksite Modification Agreement in the manner and format prescribed by bulletin;

(d) A modification with a cost in excess of \$2,500 requires prior Division approval;

(e) The Division may approve a modification for an on-the-job training program authorized under OAR 436-120. A modification will not be approved for any other type of training program. A modification in conjunction with on-the-job training is limited to \$2,500 except when the employer-at-injury or aggravation is the trainer;

(f) A modification may be provided up to one year from the hire date, if required due to the injury, to allow the worker to maintain employment;

(g) A modification will not be provided if it will not overcome a substantial obstacle to employment, or is impractical or unfeasible as determined by the Division;

(h) A modification may be provided when required due to the permanent limitations from the injury, to allow the worker to return to regular employment. The worker must have, under the latest opening of the claim, an award or order which grants permanent disability or, if prior to closure of the claim, documented medical evidence indicates permanent disability will be awarded at the time of claim closure;

(i) A modification may include:

(A) Tools, equipment, fixtures or furnishings including an ergonomic chair which would not customarily be provided by an employer. It may include installation of equipment or machinery, or alteration of permanent structures;

(B) Engineering, architectural, ergometric and similar consultive services to determine the feasibility of, or to design worksite modifications. Consultive services require prior Division approval and are generally limited to a cost of up to \$2,000.

(j) Modification equipment shall become the employer's property upon successful completion of the agreement and employment of the worker, except when specified by the Division. Such a determination shall be made prior to beginning an agreement. Exceptions include, but are not limited to:

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(A) An item unique to the worker, such as a custom designed tool to adapt the worker's prosthesis to a task; and,

(B) An item which is mobile, portable, easily transferable, not affixed or attached to the employer's property or equipment, not integral to the employer's operations and of greater value to the worker in order to maintain employment.

(k) If, prior to the termination of a Worksite Modification Agreement, the employer fails to meet any conditions prescribed for the care and protection of the modification and the modification is damaged, in disrepair or lost, the employer must repair or replace the modification without compensation from the Division; and,

(1) Worksite modification support must be in narrative form and include the information required in OAR 436-110-047(5).

(5) Obtained employment purchases may be provided under the following conditions:

(a) The worker must be eligible for reemployment assistance and not eligible for vocational assistance under OAR 436-120;

(b) Prior Division approval must be obtained before any purchase;

(c) All obtained employment purchases become the property of the worker upon return to employment; and,

(d) Obtained employment purchases are limited to the following:

(A) Tuition, books and fees for a class or course of instruction for updating existing skills to meet the requirements of an obtained job. Payment is limited to \$750;

(B) Tools and equipment required for obtained employment are limited to those items mandatory for initial employment, such as starter sets. Purchases shall not include what the employer normally provides or what the worker possesses; or, if provided in conjunction with worksite modification, duplicate items provided as part of such modification. Payment is limited to \$2,000;

(C) Clothing required as a condition of obtained employment, not including what the employer normally provides. Payment is limited to \$400;

(D) Moving expenses required for a job outside commuting distance from the worker's residence or place of employment at the time of injury or aggravation. Moving expenses will not be provided to move back to Oregon or within 50 miles of the worker's residence or place of employment at the time of injury or aggravation. Payment is limited to the cost of moving 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 is limited to a single one-way trip. In determining the need for paying moving expenses the Division shall consider the availability of jobs which do not require moving, or which require moving a shorter distance;

(E) Rental allowance for primary residence is limited to first and last month's rent, when the worker is required to move outside normal commuting distance to accept a job;

(F) Temporary lodging, meals and mileage to attend a class or course of instruction when overnight travel is required. The cost of meals, lodging, public transportation and use of a private vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees.

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These rates may be exceeded where special transportation or lodging is needed. The following conditions also apply:

- (i) Lodging, meals and mileage are limited to a combined period of one month; and,
- (ii) Payment is limited to \$2,500.
- (G) Initiation fees, or back dues and one month's current dues, required by a labor union; and,
- (H) Physician review of a job analysis required to support a Return-to-Work Incentives Agreement. Payment is limited to \$150.
- (e) Obtained employment purchases support must be in narrative form and include the information required in OAR 436-110-047(7).

Hist: Filed 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-047 Support Information for an Agreement

(1) Return-to-Work Incentive requests, agreements and supporting information shall be in the format prescribed by the Director.

(2) Agreements and supporting information shall be filed with the Division as cited in OAR 436-110-050.

(3) Return-to-Work Incentive Agreements and support information shall be completed as follows:

(a) For workers receiving vocational assistance under OAR 436-120 the insurer of the employer-at-injury shall complete the agreement and support information;

(b) For workers with a preferred worker card and not receiving vocational assistance under OAR 436-120, the new employer shall complete the agreement and support information;

(c) For workers without a preferred worker card and receiving the services of a reemployment assistance provider, the reemployment assistance provider shall complete the agreement and support information; and,

(d) For workers without a preferred worker card and not receiving vocational assistance under OAR 436-120, the Division will issue a Preferred Worker Identification Card to the eligible worker for completion as cited in (b) above.

(4) Wage subsidy support must include the following information:

(a) For a worker with a preferred worker card, a completed and signed Wage Subsidy Agreement and job analysis is required;

(b) For a worker without a preferred worker card, a narrative support document must accompany the completed and signed Wage Subsidy Agreement and job analysis. The support document shall provide the preferred worker eligibility information cited in OAR 436-110-020(2) and (3), and the following:

(A) Whether the employment is with the employer-at-injury or a new employer; regular or new employment; the job title, Dictionary of Occupational Titles (DOT) code and wage;

(B) Whether the worker has an exceptional disability.

(5) Worksite modification support must be completed as follows:

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(a) When the form of modification is known, the modification costs less than \$2,500 and the worker has a preferred worker card, a signed Worksite Modification Agreement with the support required in OAR 436-110-047(6)(c), and (f) through (m) must be completed;

(b) When the form of modification is known and the modification costs more than \$2,500, after obtaining prior Division approval, the information required in OAR 436-110-047(6)(a) through (m) must be completed. A Worksite Modification Agreement will be issued by the Division for the worker's and employer's signatures;

(c) When the form of modification is not known, provide the information required in OAR 436-110-047(6)(a) through (h). The Division will schedule an on-site visit to assist in identifying appropriate forms of modification. The Division will instruct how to proceed with the modification; and,

(d) The Division may require a job analysis, which includes the demands of the job with the proposed modifications, signed by the physician.

(6) Worksite modification support must include the following:

(a) The employer's legal name, "doing business as" (DBA) name, address, telephone number, Workers' Compensation Division (WCD) Employer Registration number, WCD insurer, Federal Tax Identification number and Unemployment Insurance number;

(b) The worker's name, address, telephone number, WCD file number, insurer claim number, date of injury, social security number and wage-at-injury;

(c) Whether the employment is with the employer-at-injury or a new employer, regular or new employment, the job title, Dictionary of Occupational Titles (DOT) code and wage;

(d) The eligibility criteria cited in OAR 436-110-020(2) and (3) for those workers without a preferred worker card; .

(e) Whether the worker has an exceptional disability;

(f) Information indicating the worker possesses the knowledge, skills and abilities for the position;

(g) A permanent physical capacities and limitations statement from the physician;

(h) The duties and physical demands of the job before modification and the worker's limitations to performing that job;

(i) Any consultive report relating to the modification, if applicable;

(j) An explanation of how the proposed modification will overcome the worker's limitations;

(k) Any issue which requires prior Division approval.

(1) Identification of the party or parties purchasing the modification, whether it is the employer, insurer or Department advancement of funds; and,

(m) An itemized list of the things to be constructed or altered; materials, tools, equipment, fixtures, furnishings, shipping and any other purchases. Include make, model and serial number of the items to be purchased or modified such as tools, equipment and fixtures. Include related rates and costs of labor, material, shipping and any other item or service.

(7) Obtained employment purchases support must include the following:

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(a) If the worker has a preferred worker card, a signed job analysis with an itemized request of purchases is required;

(b) If the worker does not have a preferred worker card, a narrative support document must accompany the completed and signed job analysis and an itemized request of the purchases. The support document must provide the following:

(A) The preferred worker eligibility criteria cited in OAR 436-110-020(2) and (3);

(B) Information indicating whether the worker is eligible or was previously eligible for OAR 436-120 vocational assistance under the latest opening of the claim; and,

(C) Information indicating whether items to be purchased for obtained employment are required by the employer of all workers and normally provided by the workers.

(8) When more than one kind of reemployment assistance is provided, all support information shall be combined into one document submitted to the Division with the agreements attached.

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436-110-050 Filing and Continuation of Agreements

(1) The employer, insurer or vocational counselor must file a signed and dated job analysis and agreement with the Division for the employer to receive return-to-work incentives. Each filing shall provide the information prescribed and be in the form required by these rules.

(2) A job analysis shall be completed as follows:

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

(b) The employer must complete a job analysis for the job offered, sign and date the job analysis. The worker must review the job offered, sign and date the job analysis acknowledging the job is within the worker's capacities; and,

(c) If the worker or employer is not certain the job is within the worker's capacities, the job analysis must be submitted to the worker's attending physician or primary care physician for approval. The physician's charges for review of the job analysis shall be paid by the worker as an obtained employment purchase as described in OAR 436-110-045(5)(d)(H).

(3) The Wage Subsidy Agreement and job analysis must be filed as follows:

(a) The agreement and job analysis must be signed and dated by the worker and employer no later than 14 days after the worker starts work;

(b) A signed agreement must be mailed to the Division no later than seven days after the last signature. The agreement, when approved by the Division, will be effective the date the worker started work; and,

(c) The agreement shall be filed along with a Worksite Modification Agreement, a request for worksite modification or a request for obtained employment purchases when applicable.

(4) The Worksite Modification Agreement must be filed as follows:

(a) The employer and worker must sign and date a job analysis and agreement no later than 14 days after the worker starts work when a modification with a cost of less than \$2,500 is known at the time the worker starts work; and,

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(b) A signed agreement and job analysis must be mailed to the Division no later than seven days after the last signature.

(5) Upon receipt of a Return-to-Work Incentive Agreement and support information, 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 as submitted.
- (6) All parties will be notified of the Division's determination.

(7) For a wage subsidy to continue until completion of the agreement when a job change occurs with the same employer, a new job analysis showing the worker has the knowledge, skills and physical capacities for the new job must be filed if the physical demands of the new job exceed the physical demands of the initial wage subsidy job.

(a) Both the employer and worker must sign and date the job analysis attesting the job is within the worker's physical capacities prior to the worker starting the new job. The completed job analysis must be mailed to the Division no later than seven days after the last signature.

(b) If the worker or employer is not certain if the job is within the worker's physical capacities, the job analysis may be submitted to the worker's attending physician or primary care physician for approval. The physician's charges for review of the job analysis shall be paid by the worker as an obtained employment purchase as described in OAR 436-110-045(5)(d)(H).

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436-110-052 Advancement of Funds and Reimbursement of Wage Subsidy, Worksite Modification and Obtained Employment Purchase Costs

(1) Return-to-work incentive costs may be reimbursed and funds advanced from the Reserve under the following conditions:

(a) The Department shall not purchase directly or otherwise assume responsibility for worksite modifications or obtained employment purchases;

(b) Reimbursement or advancement of funds shall be made only for return-to-work incentives provided in accordance with these rules. Reimbursement under these rules shall not be made for vocational assistance under OAR 436-120;

(c) Reimbursement or advancement of funds will be made only after the agreement has been filed and approved by the Division;

(d) Return-to-work incentive costs must be paid before reimbursement is requested. Reimbursement requested before the cost is paid is subject to denial or recovery, if reimbursement is made by the Department;

(e) Advancement of funds for worksite modification may be made by the Department when the employer and insurer cannot pay for the modification. Advancement of funds shall be made by check issued jointly to the employer and vendor;

(f) Advancement of funds for obtained employment purchases may be made when the insurer and worker cannot pay for the item or service. Advancement of funds shall be made by check issued

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jointly to the worker and vendor for the items listed in OAR 436-110-045(5)(d)(A) through (H) except for the cost of meals and lodging required in association with a worker moving. Advancement of funds shall be made by check issued to the worker for reasonable costs of meals and lodging due to moving and to attend a class or course of instruction when overnight travel is required as cited in OAR 436-110-045(5)(d)(F);

(g) A receipt or invoice is required verifying the expenditure for all purchases when funds are advanced. Failure to provide receipts or invoices will disqualify the party to whom funds were advanced from receiving further return-to-work incentives or reimbursement under the claim for which services were provided;

(h) 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 charge the costs of the assistance to the worker or employer, except when agreed to between the employer and insurer, on an individual case basis, prior to the provision of assistance; and,

(i) The following purchasing and reimbursement procedures and conditions are to be followed for Return-to-Work Incentive Agreements:

(A) If the cost for a single item is over \$1,000, or the cost for items purchased from a single vendor 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. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to: past vendor performance and vendor availability to service or maintain the item. Multiple purchases to circumvent this requirement are not allowed;

(B) An employer or insurer shall request reimbursement for a modification on a Worksite Modification Reimbursement Request provided by the Division at the time of agreement approval;

(C) An insurer shall request reimbursement for an obtained employment purchase on a Reimbursement Request in the manner and format prescribed by bulletin;

(D) A worker shall request reimbursement for an obtained employment purchase by submitting to the Division an invoice or receipt of the item purchased and a statement of where to send the reimbursement; and,

(E) An employer shall request reimbursement for a wage subsidy on a Wage Subsidy Reimbursement Request provided by the Division at the time of agreement approval. A Wage Subsidy Reimbursement Request must include a copy of the worker's pay records or statement of earnings compiled in accordance with generally accepted accounting principles. The wages paid must be within the prevailing wage range for that occupation, and the wage agreed to in a Return-to-Work Incentive Agreement.

(2) If, prior to the termination of an agreement, the worker fails to adequately care for and protect property provided under OAR 436-110-045(4) and (5), and the property suffers damage or loss, the worker shall not be compensated for repair or replacement of the property.

(3) All requests for reimbursement shall be made within one year of the effective date of this rule or the agreement termination date, whichever is later.

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436-110-060 End of Return-to-Work Incentive Agreements Other Than by Completion and Conditions for Restoration of Eligibility or Extension of Services

(1) If a Return-to-Work Incentive Agreement is prematurely ended by the employer for reasons beyond the worker's control, the worker may be eligible for further assistance from the Reserve with prior Division approval. Examples of reasons beyond a worker's control may include, but are not limited to breach, default or omission on the part of the employer.

(2) Eligibility for return-to-work incentives may be restored if an error was made in ending eligibility.

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

(4) The employer shall notify the Division in writing within 30 days when an agreement has been terminated prior to its originally scheduled completion date.

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

(1) Any party as defined by ORS 656.005(20), the potential employer or employer of an eligible worker, or the potential or actual employer's insurer, aggrieved by an action taken by the Division pursuant to these rules, except an action taken under OAR 436-110-095, may request a review by the Director. The process for review shall be as follows:

(a) The request for review shall be made in writing to the Administrator of the Workers' Compensation Division within 60 days of the contested action and shall specify the grounds upon which the action is contested. No review shall be granted unless the request meets the requirements of this subsection;

(b) The review will be performed by the Director or the Director's delegate. The Director's decision will be made in writing;

(c) The Director or the individual conducting the review may require any party cited in (1) above, or other source of information, to provide information or to participate in the review. Failure by the aggrieved party to comply with information or participation requirements pursuant to this subsection without reasonable cause, as determined by the individual conducting the review, will cause dismissal of the review;

(2) An aggrieved party shall not be provided review of an action taken by the Division pursuant to these rules where a previous request for review of said action by the same party has been denied under subsection (1)(a) above and more than 60 days have elapsed since the action or where a request for review of said action by the same party has been dismissed under subsection (1)(c);

(3) A decision reached by the Director shall be final, and pursuant to ORS 656.622 that decision is not subject to review by any court or other administrative body.

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436-110-090 Early Return-to-Work Education

(1) The Division may provide early return-to-work education as requested by an employer or insurer to establish reemployment programs for workers with compensable injuries or occupational diseases.

(2) Early return-to-work education includes employer and insurer instruction presented by the Division. Early return-to-work education does not include funds or direct services from the Division to implement an early return-to-work program.

(3) Early return-to-work education programs may include, but are not limited to, instruction in:

- (a) Writing an early return-to-work policy and procedure;
- (b) Performing a job analysis;
- (c) Developing early return-to-work positions;
- (d) Modifying or creating a new job for permanent employment;
- (e) Preparing an early return-to-work developmental plan; and,
- (f) Returning the worker to work.

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436-110-095 Early Return-to-Work Pilot Programs

(1) The Division may solicit applications for participation in a pilot program for implementing an employer's early return-to-work program. The purpose of a pilot program will be to identify practical and economic methods of providing assistance to employers for the early return-to-work of Oregon injured workers. The Division shall prescribe the terms and conditions for such a pilot program.

(2) The Division may solicit applications for an early return-to-work pilot program by mail, through public notice, or through any other process the Division deems appropriate. The Division shall determine the maximum quantity of applications to be distributed.

(3) An applicant for a pilot program shall submit application during the period of time specified in the application procedure. An application shall be in writing in the form and format prescribed by the Division and shall contain the information required in the application procedure.

(4) The Division shall review all applications to assure the application is complete and in compliance with the Division's intended goals of the program. Applications that are not complete or not in compliance with the Division's intended goals of the program will not be accepted.

(5) The Division shall evaluate the accepted applications using the following criteria, including but not limited to:

- (a) The feasibility of the proposed program;
- (b) The type of services provided by the applicant;

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- (c) The nature of other funding sources; and,
- (d) The administrative costs and responsibilities imposed on the Division in connection with the program.
- (6) The Division may reject all applications.
- (7) The evaluated applications with programs determined to be practical and feasible by the Division shall be forwarded to the Administrator for review and possible approval. The Administrator's decision shall be final.
- (8) The Division shall notify applicants, in writing, of the approval or disapproval of the applicants request.
- (9) Applicants approved for participation in a pilot program shall make available to the Division all records and materials necessary to monitor the program.
- (10) If the terms and conditions under which the application was approved are not met, the Division may, upon written notice, immediately revoke approval of the application and discontinue the program.
- (11) Applicants are not entitled to an appeal to the Director under OAR 436-110-080.
- (12) Applicants are subject to sanctions cited in OAR 436-110-110.

Hist: Filed 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Amended 6/21/90 as WCD Admin. Order 13-1990 (Temp.), eff. 7/1/90
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-100 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 may be recovered by the Division directly or from future reimbursements by way of offset. If the Division finds upon audit that procedures which led to disallowed reimbursements are still being used, the Division may withhold further reimbursements until corrections satisfactory to the Division 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 Division 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
Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

436-110-110 Sanctions

(1) If the Director finds an individual or a vocational assistance provider authorized pursuant to OAR 436-120, an agency of the State of Oregon, or an insurer misrepresented information in order to obtain reemployment assistance, made a serious error or omission which results in the Division approving a Return-to-Work Incentive Agreement, issuing a preferred worker card, or reimbursing claim costs, in error, or failed to comply with any condition of these rules, the Director may do any of

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the following:

(a) Order the insurer, vocational assistance provider or state agency to assume all or part of the financial obligation for the agreement;

(b) Prohibit an individual certified under OAR 436-120, a vocational assistance provider, an insurer or a state agency from negotiating or arranging Preferred Worker Program assistance or Return-to-Work Incentive Program Agreements for such period as the Director deems appropriate. The Director may also decertify an individual or vocational assistance provider under the authority of OAR 436-120-207.

(2) If the Director finds an employer falsely obtained reemployment assistance, failed to maintain Oregon workers' compensation insurance, failed to abide by the terms and conditions of a Return-to-Work Incentive Agreement or these rules, submitted false reimbursement requests or job analyses, or established a pattern of three occurrences of unreasonably terminating workers within 60 days of completion of a Return-to-Work Incentive Agreement, the Director may do any of the following:

(a) Order the employer ineligible for reemployment assistance for a specific period of time;

(b) Order the employer to repay the Department for reemployment assistance costs incurred, including the Department's legal costs; and,

(c) Pursue civil and criminal action against the employer.

Hist: Filed 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90