

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE RESERVE**

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

EFFECTIVE OCTOBER 11, 1995

436-110-200 Assistance Available from the Reemployment Assistance Reserve

(1) Assistance available from the Reserve includes the Employer-at-Injury Program and the Preferred Worker Program.

(2) The Employer-at-Injury Program is an employer-option and employer-activated program. Its purpose is to encourage the early return to work of an injured worker before claim closure. The Employer-at-Injury Program may be used only once per worker per claim opening. The insurer at injury administers the program and requests reimbursement for program costs from the Reserve. Features of the program include allowing purchases limited to:

(a) Worksite modification as defined in section (8) of this rule. Maximum reimbursement is \$2,500;

(b) Wage subsidy as defined in section (6) of this rule, except wage subsidy benefits are restricted to the following conditions:

(A) A wage subsidy is limited to a maximum duration of three months and may not be interrupted or extended;

(B) A wage subsidy is limited to a monthly reimbursement rate of 50 percent; and,

(C) The wage must be either the wage at injury or the wage paid in the early return-to-work position, whichever is lower.

(c) Tuition, books and fees for a class or course of instruction to update existing skills or to meet the requirements of the job. Maximum reimbursement is \$750;

(d) Tools and equipment required for the job limited to items mandatory for employment, such as starter sets. Purchases do not include items the employer normally provides, items the worker possesses or duplicate worksite modification items. Maximum reimbursement is \$1,000;

(e) Clothing required for the job, except clothing the employer normally provides and/or the worker already possesses. Maximum reimbursement is \$400; and,

(f) All Employer-at-Injury Program purchases, except clothing and worksite modifications unique to the worker as specified in subsection (8)(k)(A), become the employer's property upon the end of the program.

(3) The Preferred Worker Program is a worker-option and worker-activated program. Its purpose is to encourage the employment of the worker. The program consists of premium exemption, claim cost reimbursement, wage subsidy, obtained employment purchases and worksite modification. The worker may offer reemployment assistance to the employer. The employer receives the benefit of the reemployment assistance the worker and employer agree to

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE RESERVE**

use. Premium exemption and claim cost reimbursement may be used multiple times within the three-year period of eligibility. A preferred worker may use wage subsidy and obtained employment purchase assistance twice, except as otherwise provided in these rules, once with the initial employer and once with a subsequent employer. Worksite modification assistance may be used twice. If a preferred worker has a new injury or an aggravation and meets the Preferred Worker Program eligibility criteria, a new Preferred Worker Identification Card will be issued as specified in OAR 436-110-320.

(4) "Premium exemption" releases the employer from paying workers' compensation insurance premiums or premium assessments for three years from the date of first use by the worker. If the worker has a new compensable injury, the employer does not have the claim costs charged to its experience rating. Premium exemption may not be extended. Premium exemption allows the following:

(a) While actively using premium exemption, the employer does not report, and the insurer cannot use, the worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer is required to report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-085. The employer shall start paying insurance premiums and premium assessments when premium exemption ends;

(b) While premium exemption is active, the worker may provide a new eligible employer premium exemption for the remainder of the three-year premium exemption period.

(5) "Claim cost reimbursement" provides reimbursement to the insurer for claim costs when a preferred worker incurs a new compensable injury or occupational disease while employed under premium exemption. Specific limitations of requesting claim cost reimbursement include the following:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursements include disability benefits, medical benefits, vocational costs (except self-employment), claim disposition agreements in accordance with ORS 656.236, disputed claim settlements in accordance with ORS 656.289, as well as attorney fees awarded the worker or the worker's beneficiaries and administrative costs. The administrative cost factor to be applied to claim costs shall be developed in the manner specified in OAR 436-50-180; and,

(c) The claim shall not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premium or premium assessment with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend.

(6) "Wage Subsidy" provides an employer with partial reimbursement of a worker's gross wages for a specified period. "Wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging and similar advantage received from the employer, as determined by the division in accordance with OAR 436-60. "Wages" do not include tips, bonuses, employee insurance or benefits programs, employee discounts or other forms of remuneration. Wage subsidy benefits are restricted by the following conditions:

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE RESERVE**

(a) A wage subsidy is limited to a duration of six months and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability. For a worker with an exceptional disability, the wage subsidy duration is limited to one year and a monthly reimbursement rate of 75 percent. For the purposes of these rules, "exceptional disability" means a disability equivalent to the complete loss, or loss of use, of two or more limbs including, but not limited to, a serious head injury resulting in a significant loss of memory, cognitive ability or motor function or massive injuries where the loss of limbs has not occurred. The Division shall determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries awarding permanent disability;

(b) A wage subsidy may be interrupted for reasonable cause and extended to complete the wage subsidy on a whole workday basis. Examples of reasonable cause include, but are not limited to, personal or family illness, death in the family or pregnancy of the worker; and,

(c) Wages subject to reimbursement must be within the prevailing wage range for that occupation and unsubsidized by any other source. The prevailing wage range is determined by first examining the wages paid by the employer for other workers doing the same job. If no other workers are doing the same job, a labor market survey of the local labor market may be conducted. If the labor market survey does not support the wage rate requested, the Occupational Program Planning System for the specific region of Oregon will be used. The Occupational Program Planning System is a document published annually by the State of Oregon, Department of Human Resources, which lists wage ranges for common occupations in Oregon. If neither the labor market survey nor Occupational Program Planning System support the wage rate requested, the Division will determine the wage subject to reimbursement.

(7) "Obtained Employment Purchases" are those items an employer requires of all workers performing the job for which the worker is employed or which are required for the worker to accept a job or continue employment. These purchases may be provided for a job outside the state of Oregon. All purchases become the worker's property upon employment in the job for which they are required. Obtained employment purchases are limited to:

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

(b) Tools and equipment limited to those items mandatory for initial employment, such as starter sets. Purchases shall not include items the employer normally provides, items the worker possesses or duplicate worksite modification items. Maximum reimbursement is \$2,000;

(c) Clothing required for the job, not including clothing the employer normally provides and/or the worker already possesses. Maximum reimbursement is \$400;

(d) Moving expenses for a job more than 50 miles from the worker's primary residence. Moving expenses may be provided to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening, when the worker's permanent disability from the injury precludes the worker from commuting the required distance. A signed statement from the worker's medical service provider, as defined in OAR 436-10, shall be submitted to the Division as evidence of the worker's inability to commute the required distance. Reimbursement is limited to the cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker and the worker's

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE RESERVE**

family. Reimbursement of moving expenses and mileage for one vehicle is limited to a single one-way trip;

(e) Rental allowance for the worker's primary residence limited to first and last month's rent and non-refundable security and utility fees, when the worker is required to move outside commuting distance to accept a job as specified in subsection (d) of this rule;

(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 personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon, Department of Consumer and Business Services, classified employees covered under the collective bargaining agreement. These rates may be exceeded with prior Division approval where special transportation or lodging is needed. Lodging, meals and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$2,500;

(g) Initiation fees, or back dues and one month's current dues, required by a labor union;

(h) Medical service provider review of a job analysis required to support a Worksite Modification Agreement. This category may be used more than twice with prior Division approval. Maximum reimbursement is \$150 for each job analysis review;

(i) Occupational certification, license and related testing costs, or membership fees required for the job. Maximum reimbursement is \$500; and,

(j) A physical capacities evaluation by the worker's medical service provider, when requested by the Division.

(8) "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 compensable injuries or occupational diseases. "Worksite" means an employer's or worker's premises, property and equipment used to conduct business under the employer's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. Requirements for the use of worksite modification assistance are as follows:

(a) The form of modification will be determined based on the worker's disabilities from Oregon compensable injuries. The Division shall make the final determination of what is needed to modify the job. The Division must approve a completed and signed Worksite Modification Agreement, filed by the worker and employer as specified in OAR 436-110-400(6)(f), prior to any reimbursement or authorization for expenditure;

(b) Modifications may be provided up to three years from the date the worker returns to work;

(c) Modifications will only be provided to allow the worker to perform the job duties within the worker's mental and physical capabilities;

(d) Modifications may be provided to allow a worker to return to regular work;

(e) Modifications after June 30, 1990, are limited to a maximum of \$25,000 in the claim which qualified the worker for assistance. A modification over \$25,000 may be provided for a worker with an exceptional disability as defined in (6)(a);

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE RESERVE**

(f) Modifications over \$2,500 require prior Division approval;

(g) Modifications limited to a maximum of \$2,500 may be provided for on-the-job training under OAR 436-120, except when the employer at injury is the trainer. When the employer at injury is the trainer, a modification of up to \$25,000 may be provided. A modification will not be approved for any other type of training;

(h) Modifications must be practical and feasible as determined by the Division;

(i) When the Division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, with prior Division approval, funds equal to the cost of the form of modification identified by the Division may be applied toward the cost of the modification desired by the worker or employer;

(j) A modification may include tools, equipment, fixtures or furnishings not customarily provided by an employer. It may include installation of equipment or machinery, or alteration of permanent structure. It may include consultive services consisting of engineering, architectural, ergonomic and similar services to determine the feasibility, design, recommend or perform worksite modifications. Consultive services require prior Division approval and are limited to a cost of up to \$3,500. The cost for consultative services does not apply toward the total cost of a worksite modification.

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

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

(B) An item that 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; and,

(C) Items installed in the worker's personal property or premises.

(1) If, prior to the end of a Worksite Modification Agreement, the modification is damaged, in need of repair or lost, the employer or worker must repair or replace the modification without repayment from the Division. The employer or worker shall not dispose of the modification while the worker is employed or prior to the end of the agreement without Division approval. Failure to repair or replace the modification, or early disposal of the modification may result in the end of eligibility for reemployment assistance.

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE RESERVE**

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