

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

In the Matter of the Amendment of

|   | ORDERS OF ADOPTION |
|---|--------------------|
| Oregon Administrative Rules (OAR) Chapter 436,          |                    |
| Division 045, Reopened Claims Program.....              | No. 03-072         |
| Division 055, Certification of Claims Examiners.....    | No. 03-073         |
| Division 060, Claims Administration .....               | No. 03-074         |
| Division 070, Workers' Benefit Fund.....                | No. 03-075         |
| Division 075, Retroactive Program.....                  | No. 03-076         |
| Division 085, Premium Assessments:                      |                    |
| Assessments/Contributions .....                         | No. 03-077         |
| Division 150, Workers' Benefit Fund Claims Program..... | No. 03-078         |

The Director of the Department of Consumer and Business Services, pursuant to the general rulemaking authority under ORS 656.726(4), and in accordance with the procedure provided by ORS 183.335, amends OAR chapter 436, Divisions 045, 055, 060, 070, 075, 085, and 150.

On September 12, 2003, the Workers' Compensation Division filed the *Notice of Proposed Rulemaking/Hearing* with the Secretary of State to amend these rules. A Notice of Periodic Review of Rules was contained in the *Notice*. The *Statement of Need and Fiscal Impact* accompanied the *Notice*. Copies of the *Notice* and *Statement* were mailed to interested persons and legislators in accordance with ORS 183.335(1) and OAR 436-001-0000 and posted to the Workers' Compensation Division's web site. The notice was published in the October, 2003 *Oregon Bulletin*.

On October 22, 2003, a public hearing was held as announced. In addition, the record was held open for written testimony through 5:00 p.m. October 27, 2003. A written summary of testimony received and agency responses thereto, as well as principal documents relied upon, will be on file and available for public inspection upon request during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, Salem, Oregon 97301-3879.

RULE SUMMARY:

These rules have been amended to reflect Senate Bill 233's changes to ORS chapter 656.740. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. In addition, a number of "housekeeping" amendments have been made.

FINDINGS:

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the Director's authority.

- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT:

- (1) Amendments to OAR Chapter 436, as set forth in Exhibit "A", attached hereto and incorporated by reference herein, **are adopted on this 3<sup>rd</sup> day of December 2003 to be effective January 1, 2004.**
- (2) A certified copy of the amended rules adopted herein shall be filed with the Secretary of State.
- (3) A copy of the amended rules with revision marks shall be filed with the Legislative Counsel pursuant to ORS 183.715 within ten (10) days after filing with the Secretary of State.

**DATED this 3<sup>rd</sup> day of December, 2003.**

DEPARTMENT OF CONSUMER  
AND BUSINESS SERVICES

*/s/ John L. Shilts*

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John L. Shilts, Administrator  
Workers' Compensation Division

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

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

Attachments

Distribution: WCD-ID, S0, S1, S2, S3, NM

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 070**

**WORKERS' BENEFIT FUND**

**EFFECTIVE JANUARY 1, 2004**

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**NOTE:** Vertical bars in the right margins mark substantive revisions to the previously published rules.

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**EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 070**

**436-070-0001 Authority for Rules**

(1) These rules are promulgated under the Director's authority contained in ORS 656.726 and ORS 656.506.

**Stat Auth:** ORS 656.726, 656.506

**Stats. Impltd:** ORS 656.506

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83

**436-070-0002 Purpose**

The purpose of these rules is to:

(1) Prescribe the manner and intervals in which the assessment rate necessary to fund the programs is to be calculated;

(2) Prescribe the manner and intervals employers are to withhold and remit assessments;  
and

(3) Prescribe the conditions affecting the adjustment of the assessments as authorized by ORS 656.506.

**Stat Auth:** ORS 656.506

**Stats. Impltd:** ORS 656.506

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83  
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

**436-070-0003 Applicability of Rules**

These rules apply to all assessments due and collected from employees and employers pursuant to ORS 656.506 on or after the effective date of these rules.

**Stat Auth:** ORS 656.506

**Stats. Impltd:** ORS 656.506

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83  
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

**436-070-0005 Definitions**

Additional definitions are contained in ORS 656. As used in the rules, unless the context otherwise requires:

(1) "Assessments" means the funds due from employees and employers pursuant to ORS 656.506.

(2) "Employee" means a subject Oregon worker within the meaning of the Workers' Compensation Law.

(3) "Employer" means a subject Oregon employer within the meaning of the Workers' Compensation Law.

(4) "Fund" means the Workers' Benefit Fund as established by Section 15, Chapter 641, Oregon Laws 1995.

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(5) "Fund balance" means the balance of the fund after revenue and investment income has been added and expenditures have been subtracted.

(6) "Programs" mean the Retroactive Program, Reemployment Assistance Program, Reopened Claims Program and Handicapped Workers' Program as established by ORS 656.506, 656.530, 656.622, 656.625 and 656.628.

**Stat Auth:** ORS 656.506

**Stats. Impltd:** ORS 656.506

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83  
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

**436-070-0008      Administrative Review**

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the director. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the director within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the director within 60 days after the mailing date of the proposed order or assessment.

(2) Any party as defined by ORS 656.005 aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550. When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the director. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is received by the director within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by the an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order in a contested case issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed order.

**Stat Auth:** ORS 656.735 and 656.740

**Stats. Impltd:** ORS 656.735 and 656.740 (section 9, chapter 170, Oregon Laws 2003)

**Hist:** Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96  
Amended 12/3/03 as WCD Admin. Order 03-075, eff. 1/1/04

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**436-070-0010 Assessment Rate: Method and Manner of Determining**

(1) The Director shall deposit the assessments collected pursuant to ORS 656.506 and these rules to the Worker Benefit Fund .

(2) Prior to November 15 each year, the Director shall compute an assessment rate necessary to meet the needs of the fund. The assessment rate shall be preprinted on the Oregon Quarterly Tax Report and mailed to each employer. Factors considered in developing the rate include, but are not limited to:

- (a) The estimated annual fund expenditures and revenues;
- (b) The fund balance requirements;
- (c) The estimated annual hours worked per employee;(d)
- (d) The estimated number of employees covered by workers' compensation insurance;

and

- (e) Other records relating to fund expenditures and revenues.

**Stat Auth:** ORS 656.506

**Stats. Impltd:** ORS 656.506

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83  
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

**436-070-0020 Assessments: Manner and Intervals for Payment**

(1) Every employer shall compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 (2) by the number of hours or parts of an hour the employee worked in the pay period.

(a) If actual hours worked are not tracked, an employer may either calculate the assessments using a flat rate, use contract information stating the number of hours an employee works, or come up with a reasonable method for calculating hours worked. If the flat rate method is used, the calculation shall be based on 40 hours per week for employees paid weekly or biweekly, or 173.33 hours per month for employees paid monthly or semi-monthly.

(b) the employer shall retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer shall be assessed an amount equal to the amount retained from each employee.

(2) Every employer shall make and file a quarterly report of employee hours worked and amounts due upon a combined quarterly tax and assessment report form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue at the times and in the manner prescribed in ORS 316.168 and 316.171. The assessments shall be reported and remitted as follows:

(a) Employers shall remit payment with an Oregon Combined Tax Payment Coupon (Form OTC) as required by the Department of Revenue.

(b) Employers shall file the Oregon Quarterly Tax Report (Form OQ) each calendar quarter.

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(c) Employer reports and payments are due on or before the last day of the month after the close of each calendar quarter; provided, however, that when the due date specified falls upon a Saturday, Sunday, or a legal holiday, quarterly reports and payment shall not be due until the next business day. The date of receipt shall be determined in accordance with the provisions of ORS 293.660 and ORS 305.820.

(3) Employers who fail to timely report and remit assessments may be charged interest on all overdue balances at the rate established by ORS 82.010 and may be assessed civil penalties in accordance with OAR 436-070-0050.

(a) If an employer fails to file a required quarterly report or remit assessments due by the 10th day of the second month following the end of the calendar quarter, the Department may coordinate with the Department of Revenue and Employment Department to send the employer at the employer's last known address a combined written notice (Failure to File Notice) warning the employer that subsequent failure to file a required report could result in the imposition of a late filing penalty.

(b) If an employer fails to file a required quarterly report or remit assessments due within 30 days of the date of the Failure to File Notice, the Director may estimate the assessments due, including penalties and interest

(c) The director will mail written notice of the estimated assessments to the employer at the employer's last known address.

(d) The employer shall file the required quarterly report and remit assessments due, including penalties and interest, or remit the estimated assessments, including penalties and interest, within 30 days from the mailing date of the Director's notice. Unless appealed by the employer as provided in OAR 436-070-0008, the director's notice shall be final.

**Stat Auth:** ORS 656.506 and 82.010

**Stats. Impltd:** ORS 656.506

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83  
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

#### **436-070-0040      Monitoring/Auditing**

(1) Employers shall maintain payroll and employment records which reflect the total hours worked by all employees.

(2) Pursuant to ORS 656.726(8) and 656.758, the Director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers shall provide the Director with all pertinent books, records and payrolls upon request.

**Stat Auth:** ORS 656.726(8) and 656.758

**Hist:** Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83  
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95

#### **436-070-0050      Assessment of Civil Penalties**

(1) The Director pursuant to ORS 656.745 may assess a civil penalty against an employer.

(2) An employer who fails to pay assessments or other payments due to the Director and is in default may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the

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aggregate for all violations within any three month period. Each violation, or each day a violation continues, shall be considered a separate violation.

(3) An employer who fails to comply with the requirements of OAR 436-070-0020(2), may be assessed a civil penalty of up to \$2,000. When penalties are issued due to an employer's failure to pay assessments, the penalties will be assessed at 10% of the outstanding balance, with a minimum of \$50 for each violation. Penalties shall be in addition to interest and assessments owed.

**Stat Auth:** ORS 656.745(2)

**Hist:** Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

**436-070-0060 Issuance/Service of Penalty Orders**

(1) When the Director imposes a penalty under provisions of OAR 436-070-0050, the Order, including a notice of the party's appeal rights, shall be served on the party.

(2) The Order shall be served by:

(a) Delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2); or

(b) Sending a copy to the party by certified mail with instruction to deliver to the addressee only, return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure (D)(3)(b)(i).

(3) Orders of the Director issued pursuant to these rules shall contain the following notice:

IF YOU DISAGREE WITH THIS ORDER, YOU MAY REQUEST A HEARING.  
YOUR REQUEST MUST BE IN WRITING, DIRECTED TO THE DIRECTOR,  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, 350 WINTER STREET NE,  
ROOM 21 , SALEM, OREGON 97310.

THE REQUEST MUST SPECIFY THE GROUNDS UPON WHICH YOU CONTEST  
THE ORDER. THE REQUEST FOR HEARING MUST BE RECEIVED BY THE  
DEPARTMENT WITHIN 20 CALENDAR DAYS AFTER YOU RECEIVE THIS ORDER. IF  
YOU DO NOT FILE A REQUEST FOR A HEARING WITHIN THE TIME ALLOWED, THIS  
ORDER WILL BECOME FINAL AND WILL NOT BE SUBJECT TO REVIEW BY ANY  
AGENCY OR COURT.

**Stat Auth:** ORS 656.745(2)(b)

**Hist:** Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95  
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

Secretary of State  
**Certificate and Order for Filing**  
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the  
PERMANENT Rule(s) adopted on

December 3, 2003 by the  
Date prior to or same as filing date

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

OAD chapter 436  
Administrative Rules Chapter No.

Fred Bruyns (503) 947-7717  
Rules Coordinator Telephone

350 Winter Street NE; Salem OR 97301-3879  
PO Box 14480, Salem OR 97309-0405  
Address

to become effective January 1, 2004 Rulemaking Notice was published in the October 2003 *Oregon Bulletin*.\*\*  
Date upon filing or later Month and Year

**RULEMAKING ACTION**

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

**ADOPT:** OAR 436-050-0165, 436-050-0480

**AMEND:** OAR

|              |              |              |              |              |              |
|--------------|--------------|--------------|--------------|--------------|--------------|
| 436-045-0008 | 436-050-0080 | 436-050-0180 | 436-050-0290 | 436-080-0003 | 436-080-0070 |
| 436-050-0003 | 436-050-0090 | 436-050-0185 | 436-050-0400 | 436-080-0005 | 436-080-0080 |
| 436-050-0005 | 436-050-0100 | 436-050-0190 | 436-050-0440 | 436-080-0006 | 436-085-0008 |
| 436-050-0006 | 436-050-0110 | 436-050-0195 | 436-055-0008 | 436-080-0010 | 436-150-0008 |
| 436-050-0008 | 436-050-0120 | 436-050-0200 | 436-060-0008 | 436-080-0020 | 436-160-0003 |
| 436-050-0040 | 436-050-0150 | 436-050-0210 | 436-070-0008 | 436-080-0030 | 436-160-0310 |
| 436-050-0050 | 436-050-0160 | 436-050-0220 | 436-075-0008 | 436-080-0040 | 436-160-0320 |
| 436-050-0055 | 436-050-0170 | 436-050-0260 | 436-080-0001 | 436-080-0060 | 436-160-0340 |
| 436-050-0060 | 436-050-0175 | 436-050-0270 | 436-080-0002 | 436-080-0065 | 436-160-0350 |
|              |              | 436-050-0280 |              |              | 436-160-0360 |

**REPEAL:** OAR 436-050-0020, 436-050-0150T, 436-050-0160T 436-050-0165T,OAR 436-080-0050

ORS 656.704, 656.726(4)  
Statutory Authority

ORS 183.335; OAR 137-001; OAR 436-001-0000 and 436-001-0005  
Other Authority

ORS chapter 656  
Statutes being Implemented

**RULE SUMMARY**

These rules have been amended in part to reflect Senate Bill 233's changes to ORS 656. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. SB 233 also eliminated claim closure penalties for non-complying employers and changed the notification requirements for termination of guaranty contracts. In addition, these rules include a number of "housekeeping" amendments and supersede temporary OAR 436-050 rules indicated above after "REPEAL."

These rules:

- Repeal specific requirements affecting service of orders by the director.
- Reduce data reporting requirements for industry codes.
- Eliminate certain requirements to report coverage elections and cancellation of elections.
- Explain the notice and reporting requirements regarding the insurer's termination of guaranty contracts.
- State that active self-insurance certification remains in effect if a guaranty contract has been filed.
- Require notification of workers and other parties at least 10 days prior to changing claims processing locations.
- Require insurers and self-insured employers to keep documentation of dates payments are mailed.
- Require submission of audited financial statements by self-insured employers under certain conditions.
- Provide that an irrevocable standby letter of credit may be accepted by the director as an alternative to a surety bond as a security deposit. This provision has been in effect under authority of temporary rules effective 7/18/03.
- Provide that government securities, certificates of deposit, or time deposit accounts will not be accepted as new or replacement security deposits by self-insured employers effective January 1, 2004; require self-insured employers with existing securities of this type to complete a "Security Agreement and Notice to Intermediary," Form 440-4023, granting the department a security interest in and control over those financial assets.
- Provide that excess insurance coverage must be specific on a per occurrence basis, and that such coverage may include aggregate excess insurance.
- Incorporate annual reporting requirements for self-insured employers formerly published only in Bulletin 209.
- Require that future claim liability estimates or annual incurred losses include losses incurred but not reported.
- Require that a new self-insured employer's deposit is not less than the amount of the approved self-insured employer retention level for the employer's excess workers' compensation insurance.
- Require that each entity included under a self-insurance certification enter into an agreement making the entity jointly and severally liable for payment of compensation and moneys due.
- Require that self-insured employer groups maintain coverage records relating to each member.
- Prohibit a worker leasing company from providing workers' compensation coverage to another leasing company.
- Provide for assessment of civil penalties against worker leasing companies or prospective leasing companies that fail to meet the requirements of relevant rules. Provide penalty matrixes for worker leasing companies that violate these rules and for companies that operate as worker leasing companies without a license

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us). Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html#permrules>

**For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.**

/s/ John L. Shilts  
Authorized Signer

December 3, 2003  
Date

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

\*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

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