

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
WORKERS' BENEFIT FUND ASSESSMENT

REVISION-MARKED COPY

[Bracketed 8 point text is deleted]; bold/underlined text is added

EFFECTIVE APRIL 1, 2005

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 070

NOTE: Only adopted, amended, and repealed rules are included in this document:

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436-070-0001 Authority for Rules

(1) These rules are [promulgated] **adopted** under the [D]**d**irector'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

Amended 3/23/05 as **WCD Admin. Order 05-053, eff. 4/1/05**

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, **file**, and remit assessments; and

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(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
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Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

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

(1) These rules [apply to all assessments] govern the Workers' Benefit Fund assessment [due and collected from employees and employers] pursuant to ORS 656.506 on or after the effective date of these rules.

(2) These rules apply to all subject employers as defined in ORS 656.005 and any otherwise non-subject employer who elects coverage pursuant to ORS 656.039.

(3) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat Auth: ORS 656.506
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
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436-070-0005 **Definitions**

[Additional definitions are contained in ORS 656. As used in the rules, unless the context otherwise requires: **Except where the context requires otherwise, the construction of these rules is governed by the definitions in the Workers' Compensation Law and as follows:**

(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] **as defined in ORS 656.005 and any otherwise nonsubject worker for whom coverage is elected under ORS 656.039.**

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

[(4) **(3) "Fund" means the Workers' Benefit Fund as [established by Section 15, Chapter 641, Oregon Laws 1995] created in ORS 656.506.**

[(5) **(4) "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
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436-070-0008 Administrative Review

(1) **Contested case hearings regarding sanctions and civil penalties:** Any [party]**employer** 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]**administrator of the Workers' Compensation Division**. 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]**administrator of the Workers' Compensation Division** 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] **administrator** within 60 days after the mailing date of the proposed order or assessment.

(2) **Contested case hearings regarding estimation actions and orders:** Any [party]**employer** 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]**690 and OAR 436-001**. [When the matter qualifies for review as a contested case,] [t]**The process for review will be as follows:**

(a) The request for hearing must be sent in writing to the [director]**administrator of the Workers' Compensation Division**. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is [received by] **mailed or delivered to** the [director] **administrator** 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 [A]**administrative** [L]**law** [J]**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

Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

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 [D]**director** [shall] **will** compute[an] **and notify employers of the following calendar year's** 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)]**(1)** The estimated annual fund expenditures and revenues;

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- [(b)](2) The fund balance requirements;
- [(c)](3) The estimated annual hours worked per employee;
- [(d)](4) The estimated number of employees covered by workers' compensation insurance; and
- [(e)](5) 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

Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

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

(1) Every employer [shall] **must** 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] **must** 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) [t]The employer [shall] **will** retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer [shall] **will** be assessed an amount equal to the amount retained from each employee.

(2) Every employer [shall] **must** [make and]file a [quarterly]report of employee hours worked and **remit** amounts due upon a combined [quarterly]tax and assessment report form prescribed by the Department of Revenue. The report [shall] **must** be filed with the Department of Revenue:

(a) [a]At the times and in the manner prescribed in ORS 316.168 and 316.171; or

(b) Annually as required or allowed pursuant to ORS 316.197 or 657.571. [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.]

[(c)](3) **For employers required to report quarterly,** [Employer] reports and payments are due on or before the last day of the **first** month after the close of each calendar quarter. **For employers that report annually, reports and payments are due on or before the last day of January following the close of each calendar year.** [; provided, however, that when the due date specified falls upon a Saturday, Sunday, or a legal holiday, the reports and payments 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)](4) Employers who fail to timely **and accurately** [report] **file** 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.

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[(a)](5) If an employer fails to file a [required quarterly] report and [or] remit assessments due timely and accurately, the director may send to the employer a written Failure to File Notice or Notice of Audit Findings. The notice will include a [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 timely and accurately resolve all issues addressed in the written notice may [file a required report could] result in the imposition of a [late filing] civil penalty. The director may coordinate with the Department of Revenue and Employment Department to provide written notice of failure to file.

[(b)](a) Within 30 days of the Failure to File Notice or the Notice of Audit Findings, the employer must file an accurate report and remit the assessments due, or otherwise resolve to the satisfaction of the director all issues identified in the written notice. 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] comply with the notice, the [D]director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.

(b) Within 30 days of the Notice of Estimation, the employer must pay the director's estimated assessment or file and remit accurate assessment due. If the employer fails to comply with the notice, the director may send to the employer an Order of Default assessing all amounts due as calculated by the director.

(c) Within 30 days of the Order of Default, the employer must remit the estimated assessment due, unless the order is timely appealed as provided in OAR 436-070-0008.

[(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.]

(6) Employers or the director may initiate activity to resolve reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years. No calendar year limitation applies to cases involving fraud.

(7) When the director determines that the department has received moneys in excess of the amount legally due and payable or that it has received moneys to which it has no legal interest, the director will refund or credit the excess amount. For amounts less than \$20, the director will refund to employers the excess amount only upon receipt of a written request from the employer or the employer's legal representative.

Stat Auth: ORS 656.506 and 82.010

Stats. Impltd: ORS 656.506 and 293.455

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

Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0040 Monitoring/Auditing

(1) Employers [shall] **must** maintain payroll and employment records which reflect the total hours worked by all employees **for the current calendar year plus three prior calendar years.**

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

Stat Auth: ORS 656.726⁽⁸⁾

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 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0050 Assessment of Civil Penalties

(1) The [D]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] **If the director finds any employer in violation of OAR 436-070 or an order of the director, the employer may be subject to penalties pursuant to ORS 656.745 of not more than** \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, [shall] **will** be considered a separate violation.

(3) **An employer may be assessed a penalty for late filing or payment when received more than 10 calendar days after the due date established in** [who fails to comply with the requirements of] OAR 436-070-0020(2)[,]. **The penalty will be assessed at** [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 **up to \$2,000**. Penalties [shall be] **are** in addition to interest and assessments owed.

Stat Auth: ORS 656.745(2)

Stats. Impltd: ORS 656.745

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 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

[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

Repealed 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05