

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Workers' Benefit Fund Assessment
Oregon Administrative Rules
Chapter 436, Division 070**

Effective January 27, 2006

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NOTE: Significant revisions are marked with bold lines in the right margins.

Bold and underlined text is added and ~~strike through~~ text is deleted.

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**

**BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

| | | |
|-----------------------------------|---|--------------------|
| In the Matter of the Amendment of |) | |
| OAR chapter 436, division 070: |) | ORDER OF ADOPTION |
| |) | OF TEMPORARY RULES |
| Workers' Benefit Fund Assessment |) | No. 06-051 |
| |) | |

The Director of the Department of Consumer and Business Services, under rulemaking authority in ORS 656.726(4), and in accordance with the procedure in ORS 183.335(5), temporarily amends OAR chapter 436, division 070.

EXPLANATION

Under permanent OAR 436-070-0020(5), the director may issue a Failure to File Notice or Notice of Audit Findings if an employer "fails to file a report and remit assessments due timely and accurately." This wording may not allow the director to issue a Notice of Audit Findings if the employer files a report, but appears to understate the assessment. This temporary rule is necessary to enable the director to immediately take appropriate enforcement action in such cases.

FINDINGS

Failure to act promptly will result in serious prejudice to the public interest.

IT IS THEREFORE ORDERED:

- (1) Temporary amendments to OAR Chapter 436, Division 070, Workers' Benefit Fund Assessments, are **adopted on this 27th day of January 2006, to be effective January 27, 2006.**
- (2) The attached Statement of Need and Justification is incorporated by reference.
- (3) The amended rules, the Certificate and Order for Filing, and the Statement of Need and Justification will be filed with the Secretary of State.
- (4) The amended rules, with marked revisions, will be filed with Legislative Counsel in accordance with ORS 183.715 within ten days after filing with the Secretary of State.

Dated this 27th day of January 2006.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Pursuant to ADA Guidelines, alternate 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.

Distribution: WCD-ID, T, U, AT, EG, NM, EC, S0, S2

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

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

436-070-0001 Authority for Rules

(1) These rules are adopted under the director's authority contained in ORS 656.726 and 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 is to be calculated;
- (2) Prescribe the manner and intervals employers are to withhold, file, 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
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0003 Applicability of Rules

(1) These rules govern the Workers' Benefit Fund assessment 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
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

436-070-0005 Definitions

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 as defined in ORS 656.005 and any

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otherwise nonsubject worker for whom coverage is elected under ORS 656.039.

(3) "Fund" means the Workers' Benefit Fund as created in ORS 656.506.

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

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

436-070-0008 Administrative Review

(1) Contested case hearings regarding sanctions and civil penalties: Any 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 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740 .

(a) The request for hearing must be sent in writing to the 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 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 administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Hearings regarding estimation actions and orders: Under ORS 656.704(2), any employer who disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat Auth: ORS 656.735 and 656.740
Stats. Impltd: ORS 656.704, OL 2005 ch 26, 656.735, 656.740
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
Amended 10/19/05 as WCD Admin. Order 05-064, eff. 1/2/06

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

Prior to November 15 each year, the director will compute and notify employers of the following calendar year's assessment rate necessary to meet the needs of the fund. Factors considered in developing the rate include, but are not limited to:

- (1) The estimated annual fund expenditures and revenues;
- (2) The fund balance requirements;
- (3) The estimated annual hours worked per employee;
- (4) The estimated number of employees covered by workers' compensation insurance;

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and

(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 *Temporary Rule*

(1) Every employer must compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 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 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) The employer will retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer will be assessed an amount equal to the amount retained from each employee.

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

(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.

(3) For employers required to report quarterly, 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.

(4) Employers who fail to timely and accurately 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.

(5)(a) If an employer fails to file a report or files a report where the ~~and remit assessments due timely and accurately~~ appear to be understated, the director may send to the employer a written Failure to File Notice or Notice of Audit Findings. The notice will include a warning that failure to timely and accurately resolve all issues addressed in the written notice may result in the imposition of a civil penalty. The director may coordinate with the Department of Revenue and Employment Department to provide written notice of failure to file.

(a)(b) 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

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satisfaction of the director all issues identified in the written notice. If an employer fails to comply with the notice, the director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.

~~(b)~~(c) 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.

~~(e)~~(d) 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.

(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 293.455445
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
Amended 1/27/06 as WCD Admin. Order 06-051, eff. 1/27/06

436-070-0040 Monitoring/Auditing

(1) Employers 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.

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

Stat Auth: ORS 656.726
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 director pursuant to ORS 656.745 may assess a civil penalty against an employer.

(2) 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, 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 OAR 436-070-0020(2). The penalty

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will be assessed at 10% of the outstanding balance, with a minimum of \$50 for each violation up to \$2,000. Penalties 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

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Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form

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

January 27, 2006 by the
Date prior to or same as filing date.

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

OAR 436-070
Administrative Rules Chapter No.

Fred Bruyns
Rules Coordinator

(503) 947-7717
Telephone

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Address

to become effective January 27, 2006 through
Date upon filing or later

July 23, 2006
A maximum of 180 days including the effective date.

RULE CAPTION

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Clarify when the department may issue Failure to File Notice or Notice of Audit Findings.

RULEMAKING ACTION

AMEND: OAR 436-070-0020

ORS 656.726(4)
Statutory Authority:

Other Authority:

ORS 656.506 and 293.445
Statutes being Implemented

RULE SUMMARY

Under permanent OAR 436-070-0020(5), the director may issue a Failure to File Notice or Notice of Audit Findings if an employer "fails to file a report and remit assessments due timely and accurately." This wording may not allow the director to issue a Notice of Audit Findings if the employer files a report, but appears to understate the assessment. This temporary rule is necessary to enable the director to immediately take appropriate enforcement action in such cases.

/s/ John L. Shilts
Authorized Signer

1/27/06
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.

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Dept. of Consumer and Business Services,

Workers' Compensation Division

Agency and Division

OAR CHAPTER 436

Administrative Rules Chapter Number

In the Matter of: Amendment of OAR 436-070, Workers' Benefit Fund Assessment

Rule Caption: Clarify when the department may issue Failure to File Notice or Notice of Audit Findings.

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS 656.506 and 293.445

Need for the Temporary Rule(s): This amendment is needed to allow enforcement of OAR 436-070-0020(5). Under permanent OAR 436-070-0020(5), the director may issue a Failure to File Notice or Notice of Audit Findings if an employer "fails to file a report and remit assessments due timely and accurately." This wording may not allow the director to issue a Notice of Audit Findings if the employer files a report, but appears to understate the assessment. This temporary rule is necessary to enable the director to immediately take appropriate enforcement action in such cases.

Documents Relied Upon: OAR 436-070, Administrative Order No. 05-064; Memo of January 27, 2006 from Fred Bruyns, Workers' Compensation Division rules coordinator, to the rulemaking file.

These documents are available for public review from the Administrator's Office, Department of Consumer and Business Services, Workers' Compensation Division, Labor and Industries Building, 350 Winter Street N.E., Salem, Oregon 97301-3879, during regular business hours, between 8:00 am and 5:00 pm, Monday through Friday.

Justification of Temporary Rule(s): The Department of Consumer and Business Services is required by Oregon law to maintain the Workers' Benefit Fund (WBF) and to enforce laws and rules governing WBF assessments.

Under permanent OAR 436-070-0020(5), the director may issue a Failure to File Notice or Notice of Audit Findings if an employer "fails to file a report and remit assessments due timely and accurately." This wording may not allow the director to issue a Notice of Audit Findings if the employer files a report, but appears to understate the assessment. This temporary rule is necessary to enable the director to immediately take appropriate enforcement action in such cases.

/s/ John L. Shilts

1/27/06

Authorized Signer and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name