

OAR 436-070

Workers' Benefit Fund

Effective January 12, 1996

Administrative Order 96-050

**Oregon Department of Consumer and Business Services
Workers' Compensation Division**

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

WORKERS' BENEFIT FUND

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

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WORKERS' BENEFIT FUND, ORDER NUMBER 96-050**

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

WORKERS' BENEFIT FUND

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.

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

(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(20) 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.

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

(b) The request for hearing must be filed with the Director within twenty (20) days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by the Director within said twenty (20) days of receipt of notice.

(2) Any party as described in section (1) 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 by hearing before the Director 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 shall be as follows:

(a) The request for hearing must be sent in writing to the Director. No hearing shall 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 shall be conducted by the Director.

(c) Any order in a contested case issued by another person on behalf of the Director is a proposed order 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

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

436-070-0010 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

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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.

(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

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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

436-070-0030 Assessments: Periods Prior to January 1, 1995

Stat Auth: ORS 656.506, 656.532 and 656.538

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
Repealed 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 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:

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(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

**STATEMENT OF NEED AND FISCAL IMPACT
BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON**

Chapter 436-070

In the Matter of Proposed Rule Making)	Statutory Authority, Statement of Need
Regarding Worker's Benefit Fund,)	Principal Documents Relied Upon and
Oregon Administrative Rules Chapter 436)	Statement of Fiscal Impact
Workers' Compensation Division, Division 070)	

Citation of statutory authority: ORS 656.506, 656.704, 656.726(3), 656.735 and the Attorney General's Uniform and Model Rules of Procedure.

Need for these rules: These proposed amendments are necessary to carry out the Legislative intent in 1995 Oregon Laws Chapter 332 and Chapter 641. Other changes have been proposed by Division staff and the Division 070 Advisory Committee concerning the funding of the Worker's Benefit Fund under the Workers' Compensation Law. A brief summary of each proposed change is set forth in the Notice of Proposed Rulemaking/Hearing, along with a copy of the full compilation of the Division 070 rules.

Documents Relied Upon: 1995 Oregon Laws Chapter 332 and Chapter 641, OAR Chapter 436, Division 070.

Fiscal and Economic Impact: The fiscal and economic impact of carrying out the provisions of Chapter 332, Oregon Laws 1995 relating to cents per hour assessment is based on the change in definition of who is subject to the assessment. The basis for subjectivity was changed from those subject to Employment Department reporting to those subject to Workers' Compensation statute. Consequently, a small percentage of employers previously subject, will no longer be subject. In addition, a small percentage of employers and employees not previously covered, will now be subject. This will have an undetermined fiscal impact on those whose status has changed.

Advisory Committee Used: The Department sent copies of proposed rules to an Advisory Committee on September 13, 1995 and requested review and input. No significant policy questions were identified which were not based on clear statutory changes.

Dated this 14th day of November, 1995.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

/s/ Kerry Barnett

Kerry Barnett, Director