

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Retroactive Program
Oregon Administrative Rules
Chapter 436, Division 075**

Effective Jan. 1, 2010

TABLE OF CONTENTS

Rule	Page
ORDER OF ADOPTION	iii
436-075-0001 Authority for Rules	1
436-075-0002 Purpose.....	1
436-075-0003 Applicability of Rules	1
436-075-0005 Definitions	1
436-075-0006 Administration of Rules.....	2
436-075-0008 Administrative Review	2
436-075-0010 Criteria for Eligibility	3
436-075-0020 Death Benefit	3
436-075-0030 Permanent Total Disability Benefit	4
436-075-0040 Death during Permanent Total Disability	4
436-075-0050 Temporary Total Disability	5
436-075-0065 Dispositions	5
436-075-0070 Reimbursement	5
436-075-0090 Third Party Recovery.....	6
436-075-0100 Assessment of Civil Penalties.....	6
436-075-0110 Suspension and Revocation of Authorization to Issue Guaranty Contracts (<i>Repealed</i>).....	6

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

HISTORY LINES: These rules include only the most recent "History" lines. A rule's history line shows when the rule was last revised and its effective date. To obtain a "Chapter 436 revision history index," please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site: <http://wcd.oregon.gov/policy/rules/rules.html#fullset>

Blank page for two-sided printing

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

In the Matter of the Amendment of Oregon Administrative)	ORDER OF
Rules (OAR):)	ADOPTION
)	No. 09-058
436-075, Retroactive Program)	

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedures in ORS 183.335, amends OAR chapter 436, division 075.

On Sept. 15, 2009, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0009, and posted copies to its Web site. The Secretary of State included notice of the public hearing in its October 2009 *Oregon Bulletin*. On October 26, 2009, the division held a public hearing as announced. The record remained open for written testimony through October 29, 2009.

SUMMARY OF RULE AMENDMENTS

The director is repealing OAR 436-075-0110, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because another rule, OAR 436-050-0015, fully addresses the process for suspending or revoking authority to issue workers' compensation insurance policies.

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, division 075 are adopted as administrative order No. 09-058 on this **1st day of Dec. 2009, to be effective Jan. 1, 2010.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the adopted rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

**Order of Adoption
OAR chapter 436, division 075**

DATED this 1st day of December 2009.

/s/ John L. Shilts

John L. Shilts, Administrator
Workers' Compensation Division

Under 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, 503-947-7810.

Distribution: WCD-ID, S0, S1, S2, S3, S4, S5, S6, S7, S8, ML, ME

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

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 075**

436-075-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726 and 656.506.

Stat. Auth.: ORS 656.506 and ORS 656.726
Stats. Implemented: ORS 656.506
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-1990

436-075-0002 Purpose

The purpose of these rules is to establish guidelines for administering disbursements made from the Retroactive Program.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0003 Applicability of Rules

(1) These rules are effective January 1, 1998, and shall apply to all requests for reimbursement from the Retroactive Program involving benefits payable pursuant to:

- (a) ORS 656.204 Death
- (b) ORS 656.206 Permanent Total Disability
- (c) ORS 656.208 Death During Permanent Total Disability
- (d) ORS 656.210 Temporary Total Disability for injuries prior to April 1, 1974.

(2) 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 656.209, ORS 656.206, ORS 656.208, ORS 656.210, ORS 656.236, ORS 656.289 and ORS 656.506
Stats. Implemented: ORS 656.204, ORS 656.206, ORS 656.208, ORS 656.210, ORS 656.276, ORS 656.289 and ORS 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0005 Definitions

Except where the context requires otherwise, these rules are governed by the following definitions:

- (1) "Average Weekly Wage" is that wage defined in ORS 656.005.
- (2) "Child" is as defined in the laws applicable at the worker's date of injury.
- (3) "Compliance" means the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services.
- (4) "Department" means the Department of Consumer and Business Services.
- (5) "Director" means the director of the Department of Consumer and Business Services.
- (6) "Disposition" or "claim disposition" means the written agreement executed by all parties in which a claimant agrees to release rights, or agrees to release an insurer or self-insured

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

employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim.

(7) "Expiration of Benefits" means the end of entitlement to a benefit because of limits set forth in the statute in effect at the time of the worker's injury.

(8) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state, an employer or employer group who has been certified as self-insured under ORS 656.430.

(9) "Retroactive Program benefit" means that additional benefit paid to eligible claimants or beneficiaries to bring their benefits to a more current level.

(10) "Social Security Offset" means a reduction of permanent total disability benefits or fatal benefits based upon the amount of federal social security disability benefits received by a worker or surviving spouse.

(11) "Spouse" means the husband or wife of a worker. This definition also includes cohabitants as defined in ORS 656.226.

(12) "Statutory Benefit" means any benefit payable to or on behalf of the injured worker in accordance with the law in effect at the time of the worker's injury, as modified by marital/dependency status changes.

(13) "Through" means inclusion of a specific date.

(14) "To" means until but not including a specific date.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.726

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0006 Administration of Rules

For the purpose of administering these rules, orders of Compliance are deemed orders of the director.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.726

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

436-075-0008 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 or division 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 ORS 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 by the aggrieved person 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.

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

(2) Under ORS 656.704(2), any party that 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 656.740, 656.745, 656.750
Stats. Implemented: ORS 656.704, OL 2005 ch 26, 656.740, 656.745, 656.750
Hist: Amended 10/19/05 as WCD Admin. Order 05-065, eff. 1/2/06

436-075-0010 Criteria for Eligibility

(1) The department shall issue a bulletin to notify all insurers of changes in the Retroactive Program benefit levels whenever the director determines a change is necessary as indicated in ORS 656.506(7).

(2) Eligibility for Retroactive Program benefits shall be based upon the worker's injury date as follows:

(a) Workers or beneficiaries eligible to receive either death or permanent total disability benefits become eligible for Retroactive Program benefit increases when the benefits granted under the Retroactive Program bulletin exceed the benefits provided by the statute in effect at the time of the injury.

(b) For workers receiving temporary total disability benefits, the injury must have occurred prior to July 1, 1973. Workers with injuries occurring between July 1, 1973 and April 1, 1974 may qualify for benefits according to the limits defined in the Retroactive Program bulletin. Workers injured on or after April 1, 1974 are not entitled to receive Retroactive Program increases to their temporary total disability benefit.

(3) A claim shall not be eligible for Retroactive Program benefits if all issues except compensable medical services are disposed of pursuant to ORS 656.236 or settled pursuant to ORS 656.289 prior to becoming eligible under section (2) of this rule.

(4) Costs for claims of subject workers of an employer which is noncomplying as defined in ORS 656.052 are not eligible for reimbursement from the program, but remain a cost recoverable from the employer as provided by ORS 656.054(3).

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0020 Death Benefit

(1) Death benefits shall be paid to eligible beneficiaries pursuant to ORS 656.204, and the Retroactive Program benefit schedules.

(2) Burial benefits shall be paid pursuant to ORS 656.204 (1) and the Retroactive Program benefit schedules.

(3) The statutory death benefit for injuries occurring from July 1, 1973 to April 1, 1974 will be reduced by the Social Security benefit received, up to the July 1, 1973 statutory benefit level. The amount of reduction to the statutory benefit is a Retroactive Program benefit. The insurer shall request reimbursement only for the adjusted Retroactive Program benefit.

(4) Benefits payable for a partial month shall be calculated by dividing the monthly

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

benefit by the actual number of days in the month and multiplying that result by the number of days payable.

(5) Benefits for dependents shall be paid to the date of any status change.

(6) Remarriage allowance shall be paid pursuant to ORS 656.204 and the Retroactive Program benefit schedules.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.204
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0030 Permanent Total Disability Benefit

(1) Permanent total disability benefits shall be paid in accordance with ORS 656.206 and the benefit schedules set forth in the Retroactive Program bulletin.

(2) Benefit amounts payable for a partial month shall be calculated as set forth in 436-075-0020(4).

(3) Benefits for dependents shall be paid to the date of any status change.

(4) Any Social Security Offset determined pursuant to ORS 656.209 shall be first applied against the statutory portion of the permanent total disability benefit. Any amount of the social security offset that exceeds the statutory benefit shall be applied against the Retroactive Program benefit. The insurer shall request reimbursement only for that portion of the Retroactive Program benefit which has not been offset.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.206 and ORS 656.209
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0040 Death during Permanent Total Disability

(1) If the injured worker dies during the period of permanent total disability, death benefits shall be paid to eligible beneficiaries pursuant to ORS 656.208 and ORS 656.204, and the Retroactive Program benefit schedules.

(2) Permanent total disability benefits shall be paid to the date of death, at which time death benefits will commence. Where death benefits are not due, permanent total disability benefits shall be paid through the date of death.

(3) Social Security benefit for injuries occurring between July 1, 1973 and April 1, 1974 will be applied as set forth in 436-075-0020 (3).

(4) Benefit amounts payable for a partial month shall be calculated as set forth in 436-075-0020(4).

(5) Burial benefits shall be paid in accordance with ORS 656.208 (1) and 656.204 (1) and the Retroactive Program benefit schedules; however if the injury date is prior to July 1, 1973, burial benefits are due only if death results from the accidental injury causing the permanent total disability.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.204 and ORS 656.208
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

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

436-075-0050 Temporary Total Disability

(1) Temporary total disability benefits shall be paid in accordance with ORS 656.210, OAR 436-060-0150 and the benefit schedules set forth in the Retroactive Program bulletin.

(2) In no case shall the computation of benefits under these rules and the Retroactive Program bulletin cause a reduction in temporary total disability benefits currently being paid.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.210
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0065 Dispositions

(1) Any disposition of the claim by the parties pursuant to ORS 656.236, or settlement of the claim pursuant to ORS 656.289, is not eligible to receive reimbursement from the Retroactive Program unless made with the prior written approval of the director.

(2) Requests for written approval of proposed dispositions should include:

(a) A copy of the proposed disposition which specifies the amount of the proposed contribution to be made from the Retroactive Program;

(b) A statement from the insurer indicating how the amount of the contribution was calculated;

(c) Any other information as required by the director.

(3) The director will not approve the disposition for reimbursement if:

(a) The ratio of the amount requested from the program to the total amount of the disposition exceeds the percentage of current benefits due the worker from the program; or

(b) The settlement exceeds a reasonable projection of future liability.

(4) The insurer shall submit dispositions to the division in the format prescribed by the director.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.236 and ORS 656.289
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0070 Reimbursement

(1) Reimbursement from the Retroactive Program will be authorized by the Compliance Section on a quarterly basis.

(2) Requests for reimbursement must be mailed or delivered to Compliance within 30 days after the end of each quarter to be processed in that quarterly disbursement.

(3) Requests for reimbursement mailed or delivered to Compliance more than 30 days after the end of the quarter will be held over and processed with the next quarterly disbursement.

(4) A separate request for reimbursement shall be submitted for each insurer and shall include a signed certification that the payments reported on the request have been made in the amounts reported.

(5) Requests for reimbursement must be submitted in the format prescribed by the director. Each request must accurately reflect the marital/dependency status in effect and eligible

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

for reimbursement in the period requested.

(6) Compliance will not process any request failing to meet the requirements of section (4) or (5), until such requirements are met.

(7) The department shall recover any overpayment made to an insurer as a result of an insurer error in reporting, or incorrect information submitted on a quarterly request form.

(8) In the event a denied claim is found to be compensable by a hearing referee, the Workers' Compensation Board, or the Court of Appeals, and that decision is reversed by a higher level of appeal, the insurer shall receive reimbursement for Retroactive Program benefit payments required to be made while the claim was in an accepted status.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0090 Third Party Recovery

(1) In the event of a third party recovery, previously reimbursed Retroactive Program benefits are a portion of the paying agency's lien.

(2) When the insurer learns of third party settlement negotiations on any claim for which it has received reimbursement from the Retroactive Program, the insurer should notify Compliance in accordance with the provisions set forth in ORS 656.593.

(3) Remittance on recovered Retroactive Program benefits shall be made to the department in the quarter following the recovery in amounts determined in accordance with ORS 656.591 and ORS 656.593.

Stat. Auth.: ORS 656.506
Stats. Implemented: ORS 656.591 and ORS 656.593
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0100 Assessment of Civil Penalties

Pursuant to ORS 656.745 the director may assess a civil penalty against an insurer for failure to comply with these rules. Penalty orders shall be issued in accordance with ORS 656.447 and 656.704 and are subject to review under OAR 436-075-0008.

Stat. Auth.: ORS 656.745
Stats. Implemented: ORS 656.204, ORS 656.726, ORS 656.745 and ORS 656.447
Hist: Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90

**436-075-0110 Suspension and Revocation of Authorization to Issue Guaranty Contracts
(Repealed)**

Stat. Auth.: ORS 656.447
Stats. Implemented: ORS 656.446
Hist: Filed 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90
Repealed 12-1-2009 as WCD Admin. Order 09-058, eff. 1-1-2010