

ADMINISTRATIVE ORDER NO. 11-1990
EFFECTIVE JULY 1, 1990

DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
TEMPORARY OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 75

RETROACTIVE RESERVE

TABLE OF CONTENTS

| Rule | | Page |
|-------------|---|-------------|
| 436-75-001 | AUTHORITY FOR RULES..... | 1 |
| 436-75-002 | PURPOSE..... | 1 |
| 436-75-003 | APPLICABILITY OF RULES | 1 |
| 436-75-005 | DEFINITIONS..... | 1 |
| 436-75-006 | ADMINISTRATION OF RULES | 2 |
| 436-75-008 | ADMINISTRATIVE REVIEW | 2 |
| 436-75-010 | CRITERIA FOR ELIGIBILITY..... | 3 |
| 436-75-020 | DEATH BENEFIT..... | 3 |
| 436-75-030 | PERMANENT TOTAL DISABILITY BENEFIT | 4 |
| 436-75-040 | DEATH DURING PERMANENT TOTAL DISABILITY | 4 |
| 436-75-050 | TEMPORARY TOTAL DISABILITY | 4 |
| 436-75-060 | PERMANENT PARTIAL DISABILITY..... | 5 |
| 436-75-065 | DISPOSITIONS..... | 5 |
| 436-75-070 | REIMBURSEMENT | 5 |
| 436-75-080 | ALIEN BENEFITS | 6 |
| 436-75-090 | THIRD PARTY RECOVERY..... | 6 |
| 436-75-100 | ASSESSMENT OF CIVIL PENALTIES | 6 |

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
RETROACTIVE RESERVE**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 75**

436-75-001 AUTHORITY FOR RULES

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

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

436-75-002 PURPOSE

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

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

436-75-003 APPLICABILITY OF RULES

These rules are effective [January] **July** 1, 1990 and shall apply to all requests for reimbursement from the Retroactive Reserve involving benefits payable pursuant to:

- (1) ORS 656.204 Death
- (2) ORS 656.206 Permanent Total Disability
- (3) ORS 656.208 Death During Permanent Total Disability
- (4) ORS 656.210 Temporary Total Disability for injuries prior to April 1, 1974.
- (5) ORS 656.214 Permanent Partial Disability regarding unscheduled disability for injuries prior to July 1, 1967, and other permanent partial disability awards for injuries occurring prior to July 1, 1971.

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temporary)

436-75-005 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 Insurance and Finance.
- (4) "Department" means the Department of Insurance and Finance.
- (5) "Director" means the Director of the Department of Insurance and Finance.

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

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
RETROACTIVE RESERVE**

[(6)](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.

[(7)](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.

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

[(9)](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.

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

[(11)](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.

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

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

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temporary)

436-75-006 ADMINISTRATION OF RULES

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

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

436-75-008 ADMINISTRATIVE REVIEW

(1) **The process for administrative review shall be as follows:**

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division **within thirty (30) days of the action.**

(b) The review shall be conducted by the administrator or the administrator's designee. The administrator's decision **on review** will establish whether the decision is final or whether the aggrieved party may request a hearing before the director **pursuant to ORS 183.310.**

(3) [Notwithstanding ORS 183.315(1), the issuance of orders under these rules, the conduct of hearings and the judicial review by the Court of Appeals shall be as provided in ORS 183.415 through ORS 183.495 except:] **When the issue which caused the action or decision qualifies for a hearing before the director as a contested case, it shall be reviewed pursuant to ORS 183.310 to 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies as a contested case, the process for review shall be as follows:**

(a) [The Board may promulgate rules for the conduct of the hearings under these rules:] **The request for hearing shall be sent to the administrator of the Workers' Compensation Division. No hearing shall**

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
RETROACTIVE RESERVE**

be granted unless the request specifies the grounds and is received by the division within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) [The order of the hearing referee shall be deemed to be a final order of the Director; and] **The hearing shall be conducted by the director or the director's designee.**

(c) [The Director shall have the same right to a judicial review of the order of the hearing referee as any person who is adversely affected or aggrieved by such final order.] **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.**

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temporary)

436-75-010 CRITERIA FOR ELIGIBILITY

(1) The Department shall issue a bulletin to notify all insurers of changes in the Retroactive Reserve benefit levels whenever the Director determines a change is necessary as indicated in ORS 656.506(3).

(2) Eligibility for Retroactive Reserve 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 Reserve benefit increases when the benefits granted under the Retroactive Reserve 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 Reserve bulletin. Workers injured on or after April 1, 1974 are not entitled to receive Retroactive Reserve increases to their temporary total disability benefit.

(c) For workers receiving permanent partial disability benefits, the injury must have occurred prior to July 1, 1971.

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

436-75-020 DEATH BENEFIT

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

(2) Burial benefits shall be paid pursuant to ORS 656.204 (1) and the Retroactive Reserve 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 Reserve benefit. The insurer shall request reimbursement only for the adjusted Retroactive Reserve benefit.

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

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
RETROACTIVE RESERVE**

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 Reserve benefit schedules.

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 7-1-90

436-75-030 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 Reserve bulletin.

(2) Benefit amounts payable for a partial month shall be calculated as set forth in 436-75-020 (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 that exceeds the statutory benefit shall be applied against the Retroactive Reserve benefit. The insurer shall request reimbursement only for that portion of the Retroactive Reserve benefit which has not been offset.

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

436-75-040 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 Reserve 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 436-75-020 (3).

(4) Benefit amounts payable for a partial month shall be calculated as set forth in 436-75-020 (4).

(5) Burial benefits shall be paid in accordance with ORS 656.208 (1) and 656.204 (1) and the Retroactive Reserve 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.

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

436-75-050 TEMPORARY TOTAL DISABILITY

(1) Temporary total disability benefits shall be paid in accordance with ORS 656.210, OAR 436-60-150 and the benefit schedules set forth in the Retroactive Reserve bulletin.

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
RETROACTIVE RESERVE**

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

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

436-75-060 PERMANENT PARTIAL DISABILITY

(1) Permanent partial disability benefits shall be paid in accordance with ORS 656.214, ORS 656.216 and the benefit schedules set forth in the Retroactive Reserve bulletin.

(2) The monthly permanent partial disability payment shall be established by multiplying the weekly temporary total disability rate at the time of closure by 4.35.

(3) Benefit amounts payable for a partial month shall be calculated as in 436-75-020 (4).

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

436-75-065 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 Reserve 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 Reserve;

(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 insurer shall submit dispositions to the Division in the format prescribed by the Director.

Hist: Filed 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temporary)

436-75-070 REIMBURSEMENT

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

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

(3) Requests for reimbursement received by 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 for reimbursement in the period requested.

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
RETROACTIVE RESERVE**

(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 Reserve benefit payments required to be made while the claim was in an accepted status.

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

436-75-080 ALIEN BENEFITS

Reimbursement from the Retroactive Reserve will be made at the alien benefit rate in effect for the period requested if the injured worker or beneficiary entitled to benefits pursuant to ORS 656.204 to 656.214 is an alien residing outside of the United States or its dependencies. An alien is a person who is a citizen or subject of a country other than the United States of America.

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

436-75-090 THIRD PARTY RECOVERY

(1) In the event of a third party recovery, previously reimbursed Retroactive Reserve 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 Reserve, the insurer should notify Compliance in accordance with the provisions set forth in ORS 656.593.

(3) Remittance on recovered Retroactive Reserve 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.

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

436-75-100 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, [ORS]and 656.704, **and** [the contested case provisions of the Administrative Procedures Act (ORS Chapter 183)] **are subject to review under OAR 436-75-008.**

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90
Amended 6-18-90 as WCD Admin. Order 11-1990, eff. 7-1-90 (Temporary)