

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

In the Matter of the Amendment of)
Oregon Administrative Rule (OAR)) ORDER OF ADOPTION
Chapter 436, Division 115, Worksite)
Redesign Program)

The Director of the Department of Consumer and Business Services, pursuant to the general rulemaking authority under ORS 656.726(3) and in accordance with the procedure provided by ORS 183.335, repeals OAR Chapter 436, Department of Consumer and Business Services, Division 115, Worksite Redesign Program.

On August 10, 1998, the Workers' Compensation Division filed Notice of Proposed Rulemaking with the Secretary of State to repeal rules governing the Worksite Redesign Program. The Statement of Need and Fiscal Impact were also filed with the Secretary of State.

Copies of the notice were mailed to interested persons in accordance with ORS 183.335(7) and OAR 436-001-0000 and to those on the Division's distribution mailing list as their interest indicated. The notice was published in the September 1998, *Oregon Bulletin*.

The record was held open for written testimony through 5:00 p.m. October 1, 1998. No testimony was received. The principal documents relied upon are on file and available for the public inspection between the hours of 8:00 a.m. and 5:00 p.m., normal working days Monday through Friday in the Administrator's Office, Workers' Compensation Division, Labor & Industries Building, 350 Winter Street NE, Salem, Oregon 97310.

EXPLANATION: Pursuant to ORS 656.622, the director may establish programs such as the Worksite Redesign Program. Responsibility for this program has been transferred from the Workers' Compensation Division (WCD) to Oregon OSHA. Oregon OSHA has adopted rules to govern this program. WCD is, therefore, repealing OAR Chapter 436, Division 115 in its entirety.

Having reviewed and considered the record and being fully advised, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) The 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.

**PURSUANT TO THE AMERICANS WITH DISABILITIES ACT GUIDELINES,
ALTERNATE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE TO
QUALIFIED INDIVIDUALS UPON REQUEST TO THE DIVISION**

**If you have questions about these rules or need them in an alternate format, contact the
Workers' Compensation Division at (503) 947-7810.**

IT IS THEREFORE ORDERED THAT:

- 1) OAR Chapter 436, Division 115, as set forth in Exhibit "A" attached hereto, and by reference incorporated herein, is repealed effective July 15, 1999.
- 2) Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need, Principal Documents Relied On and Statement of Fiscal Impact, attached hereto, is by this reference incorporated herein.
- 3) This Order of Adoption, Exhibit "A" and Exhibit "B" shall be filed with the Secretary of State.
- 4) A copy of the rule(s) and Exhibit "B" shall be filed with Legislative Counsel pursuant to the provisions of ORS 183.715 within ten days after filing with the Secretary of State.

DATED this 15th day of July, 1999.

DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

/s/ Mary C. Neidig

Mary C. Neidig

Workers' Compensation Division

Attachments

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REPEAL OF WORKSITE REDESIGN PROGRAM RULES**

EXHIBIT "A"

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 115
EFFECTIVE JULY 15, 1999**

436-115-0001 Authority for Rules

[The director has adopted OAR 436-115 under authority of ORS 656.622(9) and ORS 656.726(3).]

Stat. Auth.: ORS 656.622(9) and 656.726(3)

Stats. Implemented: ORS Chapter 656.622

Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96

Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0002 Purpose of Rules

[These rules explain what assistance is available from the Worksite Redesign Program, who is qualified and how to receive assistance. The department may solicit applications for worksite redesign grants and product grants in order to prevent the recurrence of on-the-job injuries and diseases.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)

Stats. Implemented: ORS Chapter 656.622

Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96

Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0003 Applicability of Rules

[These rules apply to all requests for Worksite Redesign Program assistance received by the department on or after the effective date of these rules. Worksite Redesign Program assistance shall only be provided in Oregon.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)

Stats. Implemented: ORS Chapter 656.622

Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96

Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0005 Definitions

(1) "Applicant" means the employer, employer group, employee group, educational association or educational institution which applies for a grant. An employer group or employee group may be created for the sole purpose of applying for and administering a worksite redesign grant.

(2) "Committee" means the Application Review Committee. Committee members are appointed by the director. The Committee recommends approval or disapproval of worksite redesign grants to the director.

(3) "Employer" means an Oregon employer within the meaning of the Workers' Compensation Law.

(4) "Fund" means the Workers' Benefit Fund.

(5) "Grant agreement" means the contract between the department and the grantee following department approval of the application for a worksite redesign grant.

(6) "Grant product" means the workplace ergonomic solution resulting from an approved grant agreement.

(7) "OR-OSHA" means the Oregon Occupational Safety and Health Division.

(8) "Product grant" means the amount of funding awarded an employer for the purchase of a grant product.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REPEAL OF WORKSITE REDESIGN PROGRAM RULES**

(9) "Worksite redesign grant" means a grant for the purpose of performing research and analysis of a workplace problem, or for development of a solution to a workplace problem in order to prevent or reduce the incidence of on-the-job injuries and illnesses.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0006 Administration of Rules

[(1) All payments under the Worksite Redesign Program are subject to the availability of funds. The director has final authority to approve/disapprove requests for assistance and to determine how the funds will be disbursed.

(2) In addition to approving worksite redesign grants, the director may use the Fund for educational activities to provide information about and encourage application for grants for prevention or reduction of on-the-job injuries and illnesses.

(3) Pursuant to ORS 656.622, decisions by the director regarding Worksite Redesign Program assistance may not be reviewed by any court or other administrative body.

(4) The following conditions apply to all ideas, concepts, know-how, techniques, processes, methods, inventions, discoveries, developments, innovations and improvements conceived or made by a grantee, a grantee's employees or a grantee's contractors resulting from work under a worksite redesign grant:

(a) Public use of a new product design. All inventions and copyright works arising from work conducted under a worksite redesign grant shall be dedicated to the public domain without any limitation on their use by the public. Neither DCBS nor grant recipient will hold trade secrets as a result of work conducted under a worksite redesign grant.

(b) The grantee agrees to abandon any and all ideas, concepts, know-how, techniques, processes, methods, inventions, discoveries, developments, innovations and improvements ("Inventions") conceived or made by the grantee, the grantee's employees, or the grantee's contractors, whether alone or with others, resulting from work under the grant. The grantee agrees to disclose all such Inventions to the department promptly and to provide all assistance reasonably requested by the department to document the abandonment of such Inventions and/or dedication of such Inventions to the public domain. There shall be no restriction on the manufacture, use or sale of such Inventions by the public.

(c) Published works produced by grantee shall bear an acknowledgment of support through the use of the following or comparable statement: "This material has been made possible by a grant from the Oregon Department of Consumer and Business Services."]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0020 Assistance Available under the Worksite Redesign Program

[Assistance from the Fund will be in the form of grants. Grants will include partial funding for research and analysis of workplace problems, for development of solutions to workplace ergonomic problems and for purchase of grant products. If a readily available solution to the ergonomic problem has been identified by the applicant or known to DCBS, the project will not be approved. However, if during the research phase of a funded project a previously unknown solution is found, the grant agreement may be amended to permit purchase and evaluation of the new-found solution.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0050 Eligibility for Worksite Redesign Assistance

[(1) As part of the application, the applicant shall have documentation of the workplace problem such as accepted compensable claims, incident reports, OSHA 200 logs, hazard evaluations or statistical reports of injuries and illnesses for the industry and/or occupation for which the applicant seeks an ergonomic solution.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REPEAL OF WORKSITE REDESIGN PROGRAM RULES**

(2) An applicant shall identify an employer as the research site and/or the recipient of the prototype design or grant product. That designated employer and those employers who apply for a product grant must meet the following eligibility conditions:

- (a) The employer has and maintains Oregon workers' compensation insurance coverage as required by law;
- (b) Business operations are ongoing and have continued for the three-year period prior to the date the applicant submits the application to the department;
- (c) The employer demonstrates financial stability and solvency by providing for the three-year period prior to the date the applicant submits the application one of the following: a letter of evaluation by an independent certified public accounting firm; a letter of credit; tax records; audited profit and loss statements and balance sheets; or audited annual reports;
- (d) The employer has no bankruptcy or receivership action and no judgments for nonpayment of wages/debts within the one-year period prior to the date the department receives the application;
- (e) At the time the applicant submits the application, the employer has no outstanding OR-OSHA citations at any of the employer's locations or sites with unabated/uncorrected safety or health hazards associated with the equipment or process that is the subject of the application; and,
- (f) The employer provides information about the employer's early-return-to-work program.

(3) Reasons for ending Worksite Redesign Program eligibility which apply to all applicants as defined in OAR 436-115-0005(1) include:

- (a) Misrepresentation or omission of information by the applicant to obtain assistance;
- (b) Failure of the applicant to provide requested information or to cooperate in the Worksite Redesign Program grant review process or in the development or implementation of an approved grant;
- (c) The applicant is precluded from receiving Worksite Redesign Program assistance in accordance with OAR 436-115-0150;
- (4) Reasons for ending Worksite Redesign Program eligibility which apply to employer applicants, employers designated in the grant application as the research site and/or the recipient of the prototype design and employers who are grant product recipients include:

- (a) The employer does not maintain Oregon workers' compensation insurance coverage as required by law;
- (b) The employer, after requesting Worksite Redesign Program assistance, becomes subject to bankruptcy or receivership action or incurs judgment for nonpayment of wages/debts; or,
- (c) The employer, after requesting Worksite Redesign Program assistance, is issued a citation by OR-OSHA resulting from a fatality investigation, accident investigation, a complaint investigation, or a referral from another agency, which is related to or associated with, the subject of the worksite redesign grant. The department will hold in abeyance any requests for Worksite Redesign Program assistance until the OR-OSHA enforcement action is resolved.

(5) An employer who enters into negotiation for sale or merger of business after requesting Worksite Redesign Program assistance shall provide the department documentation of its ongoing commitment and ability to undertake and complete the activities as described in its grant application. The department will review the material provided by the employer and will determine the appropriateness and feasibility of proceeding with the grant request process.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0070 Procedure to Use the Worksite Redesign Program

[(1) An applicant shall submit a complete, written application in the form and format prescribed by the director.

(2) The department may provide education and consultation to potential applicants, applicants and grantees.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REPEAL OF WORKSITE REDESIGN PROGRAM RULES**

436-115-0090 Application Review

- [(1) Upon receipt of an application, the department may authorize consultative services provided by consultants under contract.
- (2) The department shall review applications and prepare staff reports for Committee review.
- (3) After department review, the worksite redesign grant application and corresponding staff report shall be forwarded to the Committee for review.
- (4) In reviewing worksite redesign grant applications, the Committee shall consider the following elements:
 - (a) Program eligibility criteria;
 - (b) Funding limitations established by the director;
 - (c) The funding priorities established by the department;
 - (d) The quality review criteria established by the department;
 - (e) The staff report provided by the department;
 - (f) Feasibility and appropriateness to recommend approval for an employer who is negotiating sale or merger; and,
 - (g) Appropriateness to recommend approval for a grant which may result in a reduction in the employer's labor force.
- (5) Following completion of a worksite redesign grant, the department may solicit applications for a product grant.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0110 Grant Awards

- [(1) The department shall notify applicants, in writing, of the approval or disapproval of the grant request.
- (2) The applicant shall provide reports and documentation relating to the grant and the terms and conditions agreed to in connection with the grant.
- (3) Grant recipients shall make available to the department all records and materials necessary to monitor a grant.
- (4) Upon approval of the worksite redesign grant application, the department will authorize funding, to include disbursement intervals, in accordance with the conditions agreed upon in the approved grant agreement.
- (5) Upon approval of the product grant application, the department will authorize funding in accordance with the conditions agreed upon in the approved grant agreement.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96
Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0120 Program Evaluation

- [The director will conduct studies to evaluate the Worksite Redesign Program's success in precluding on-the-job injuries. Findings of such studies will be presented to the Management/Labor Advisory Committee.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)
Stats. Implemented: ORS Chapter 656.622
Hist: Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96
Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0130 Audits

- [(1) Applicants selected for funding are subject to periodic program and fiscal audits.]

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REPEAL OF WORKSITE REDESIGN PROGRAM RULES**

(2) The grantee shall maintain case files, notices, records, reports, receipts and canceled checks or payment verification documenting use of any and all Worksite Redesign Program funds as well as funds the grantee commits to an approved Worksite Redesign Program grant project. These records shall be maintained for a period of three years after the last grant disbursement.

(3) The department reserves the right to visit the worksite to determine compliance with the Worksite Redesign Program agreement.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)

Stats. Implemented: ORS Chapter 656.622

Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96 Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0150 Sanctions

[If the director finds any violation of OAR 436-115-0006, 436-115-0050, 436-115-0110, 436-115-0130, or if the terms and conditions under which the agreement was approved are not met, the director may take one or more of the following actions:

(1) Immediately revoke approval of the use of the Worksite Redesign Program funds;

(2) Require repayment of all or a portion of any funds advanced;

(3) Prohibit the employer, employee group or association, or educational institution from receiving additional grants for a period of up to three years; and

(4) Issue a civil penalty against the employer in an amount not to exceed \$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. All penalties collected under this section shall be paid into the Department of Consumer and Business Services Fund. In determining the amount of penalty, the director shall consider:

(a) The degree of harm inflicted due to the offense;

(b) Whether there have been previous violations; and

(c) Whether there is evidence of willful violation.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)

Stats. Implemented: ORS Chapter 656.622

Hist: Filed 12/19/95 as WCD Admin. Order 95-070, (Temp.) eff. 1/1/96

Filed 7-26-96 as WCD Admin. Order 96-064, eff. 8-9-96

Amended 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

436-115-0160 Issuance/Service of Penalty Orders

[(1) When a penalty is assessed as provided by OAR 436-115-0150, the Division shall serve an order on the party, with a notice of the rights provided under ORS 656.740.

(2) The Division shall serve the Order by delivering a copy to the party in the manner provided by ORCP 7D.(3); or by sending a copy to the party by certified mail with return receipt requested.]

Stat. Auth.: ORS 656.622(9) and 656.726(3)

Stats. Implemented: ORS Chapter 656.622

Hist: Filed 5-29-97 as WCD Admin. Order 97-055, eff. 6-1-97

Repealed 7-15-99 as WCD Admin. Order 99-059, eff. 7-15-99

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

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

7-15-99 by the
Date prior to or same as filing date.

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

436-115
Administrative Rules Chapter No.

Marilyn Odell
Rules Coordinator

(503) 947-7717 FAX: (503) 947-7037
Telephone

350 Winter Street NE; Salem, Oregon 97310
Address

to become effective 7-15-99 Rulemaking Notice was published in the
Date upon filing or later *Oregon Bulletin.***

September 1998
Month and Year

RULEMAKING ACTION

REPEAL: OAR 436-115 in its entirety (436-115-0001, 0002, 0003, 0005, 0006, 0020, 0050, 0070, 0090, 0110, 0120, 0130, 0150, 0160)

ORS 656.622, 656.704, and 656.726(3)

Statutory authority

Attorney General's Uniform Model Rules of Procedure

Other authority

ORS 656.622

Statutes being implemented

RULE SUMMARY

Pursuant to ORS 656.622, the director may establish programs such as the Worksite Redesign Program. Responsibility for this program has been transferred from WCD to Oregon OSHA. Oregon OSHA has adopted rules to govern this program. WCD is therefore repealing OAR 436-115. All staff and rules for this program are in Oregon OSHA. This rulemaking has been coordinated with OR-OSHA.

/s/ Mary C. Neidig

Authorized Signer

7-15-99

Date

*Copies include a photocopy of this certificate with paper and electronic copies of each rule listed in the Rulemaking Action.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 p.m. on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 p.m. the preceding workday.

Distribution: WCD-ID, S, T, U, AT, CE, EG, IA, LU, NM, DD, LL, RE, VR, ML