

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 EMPLOYER/INSURER COVERAGE RESPONSIBILITY

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[Bracketed 8 point text is deleted]; **bold/underlined text is added**

EFFECTIVE SEPTEMBER 15, 2003

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 050

NOTE: Only adopted, amended, and repealed rules are included in this document:

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EXHIBIT "A"
 OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 050

436-050-0003 Applicability of Rules

(1) These rules are effective [July 1, 2001]**September 15, 2003**, to carry out the provisions of:

- (a) ORS 656.017 - Employer required to pay compensation and perform other duties.
- (b) ORS 656.029 - Independent contractor status.
- (c) ORS 656.126 - Coverage while temporarily in or out of state.
- (d) ORS 656.407 - Qualifications of insured employers.
- (e) ORS 656.419 - Guaranty contracts.
- (f) ORS 656.423 - Cancellation of coverage by employer.
- (g) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.

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- (h) ORS 656.430 - Certification of self-insured employer.
- (i) ORS 656.434 - Certification effective until canceled or revoked; revocation of certificate.
- (j) ORS 656.443 - Procedure upon default by employer.
- (k) ORS 656.447 - Sanctions against insurer for failure to comply with contracts, orders or rules.
- (~~[L]~~) ORS 656.455 - Records location and inspection.
- (m) ORS 656.745 - Civil penalties.
- (n) ORS 656.850 and 656.855 - Worker-leasing companies.
- (o) ORS 731.475 - Insurer's in-state location.
- (2) [These rules apply to any person performing as a worker leasing company on or after May 1, 1994.
- (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 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76, as Rule 436-51-001
Amended 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary as Rule 436-51-130)
Amended 6/15/76 as WCB Admin. Order 3-1976
Amended 4/2/80 as WCD Admin. Order 3-1980, eff. 4/2/80
Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
Amended 12/22/83 as WCD Admin. Order 7-1983, eff. 12/27/83
Renumbered from OAR 436-51-008, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94
Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98
Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0410 Notice to Director of Lease Arrangement; Termination

(1) **Within 14 days after the effective date of the lease arrangement or contract, a**[A] worker-leasing company [shall] **must** file written notice with the director **and its insurer, using Form 440-2465,** that it is providing leased workers to a client and workers' compensation coverage. [The notices shall be in a form and format as prescribed by bulletin. A copy of the notice must also be filed by the leasing company with its insurer.] The notice must be correct and complete, and must **include:** [be filed within 14 days after the effective date of the lease arrangement or contract.]

(a) The client's:

(A) Legal name;

(B) FEIN or other tax reporting number;

(C) Type of ownership;

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(D) Primary nature of business;

(E) Mailing address; and

(F) Street address in Oregon;

(b) The worker leasing company's:

(A) Legal name;

(B) Mailing address;

(C) FEIN or other tax reporting number;

(D) WCD worker leasing license number, if any;

(E) Workers' compensation insurer's name (or "self-insured");

(F) Effective date of leasing contract;

(G) Contact name and phone number; and

(H) A signature of a representative of the worker leasing company.

(2) A worker-leasing company may terminate its obligation to provide workers' compensation coverage by giving to **its insurer, its**^[the] client, and the director written notice of the termination. [A copy of the termination notice must also be filed by the leasing company with its insurer.] A notice of termination shall state the effective date and hour of termination, but the termination [shall] **will** be effective not less than 30 days after the notice is received by the director. Notice to the client under this section [shall] **must** be given by mail, addressed to the client at its last-known address.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855

Stats. Implemented: ORS 656.850 and 656.855

Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94

Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0420 Temporary Worker Distinguished from Leased Worker

(1) A person who provides a worker to work for a client will be considered to be providing the worker on a "temporary basis" only if there is contemporaneous written documentation, retained by either the client or the temporary service provider, which indicates the duration of the work to be performed and the worker is provided pursuant to ORS 656.850(1)(b), under one or more of the following conditions:

(a) Special situations to cover employee absences or employee leaves, including but not limited to such things as maternity leave, vacation, jury duty, or illness from which the permanent worker will return to work;

(b) To fill a professional skill shortage;

(c) To staff a seasonal workload;

(d) To staff a special assignment or project where the worker will be terminated or assigned to another temporary project upon completion;

(e) [Where student trainees are provided through a] **A** [work experience program which is operated by a school district or community college, and in which the trainee is paid by the school district or community college] **student worker provided and**

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paid by a school district or community college through a work experience program; or

(f) The work contract is part of the client's overall employment selection program, such as where new workers must satisfactorily pass a probationary period before being granted permanent employee status.

(2) If a person provides workers, by contract and for a fee, to work for a client and any such workers are not provided on a "temporary basis," that person will be considered a worker-leasing company.

(3) If a person provides both leased workers and workers on a temporary basis, that person shall maintain payroll records that show specifically which workers are provided on a temporary basis. If the payroll records do not specify which workers are provided on a temporary basis, all workers are deemed to be leased workers.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
 Amended 12/23/94 as WCD Admin. Order 94-063, eff. 2/1/95
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0430 License Required

[No person shall perform services as a worker-leasing company in this state without first having obtained a license therefor from the director.]

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Repealed 8/28/03 by WCD Admin. Order 03-056, eff. 9/15/03

436-050-0440 Qualifications, [and] Applications, and Renewals for License as a Worker-Leasing Company

(1) Each applicant for initial license or renewal as a worker-leasing company shall:

(a) Be either an Oregon corporation or [a] **other** legal entity [authorized] **registered with the Oregon Secretary of State, Corporations Division** to conduct business in this state;

(b) Maintain workers' compensation coverage pursuant to ORS 656.017; and

(c) Pay the required licensing fee of \$1,250.

(2) Each applicant for initial license or renewal as a worker-leasing company must submit an application for license **on Form 440-2466**. [in a form and format as prescribed by bulletin] **The form and accompanying documentation must** [which] include [s but may not be limited to]:

(a) Legal name;

(b) Mailing address;

(c) In-state and out-of-state phone numbers;

(d) FEIN or other tax reporting number;

(e) Type of business;

(f) Physical address for Oregon principal place of business;

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(g) Assumed business names;

(h) Name of workers' compensation insurer (or "self-insured") and policy number;

(i) WCD employer number, if any;

(j) Names and titles of authorized representatives, including the Oregon representative;

(k) List of controlling persons holding or controlling 10 percent or more interest in the company, including their names, titles, residence addresses, and dates of birth;

(l) A record of any present or prior worker leasing company services provided in any state and an explanation of those services;

(m) A letter of verification or good-standing from the controlling regulatory agency of those states in which a worker leasing license or certification is currently held;

(n) Verification of compliance with tax laws from Oregon Employment Division, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 440-2466, the worker leasing license application;

(o) A record of any actions in which an essential element of the action involved fraud, theft, or embezzlement of monies on the part of the applicant or any controlling person; such actions may include:

(A) Criminal convictions;

(B) Lawsuits;

(C) Guilty pleas;

(D) Judgments; or

(E) Administrative actions;

(p) Full details regarding any action taken under subsection (o) of this section, including:

(A) The nature and dates of the action(s);

(B) Outcomes, sentences, and or conditions imposed;

(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and

(D) The designation and/or license number for any actions against a license;

(a)(q) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS [c]chapter 654, *The Oregon Safe Employment Act*, and collect the information necessary to establish each client's experience rating; and

[(b) A listing of the company's controlling persons.]

(r) A notarized signature of an authorized representative of the applicant.

(3) Incomplete or incorrectly completed application packages will be rejected and

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returned to the applicant. The applicant will not be authorized to lease employees until the director has issued a license.

(4) Upon receipt of a completed application package, the application will be reviewed. The department may conduct a background investigation of each individual applicant and controlling person. If the application is approved, the director will issue a license.

[3)](5) Each license issued under these rules shall automatically expire two years after the date of issuance unless renewed by the licensee.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0450 Recordkeeping

(1) Every licensed worker-leasing company [shall] **must** [designate and] give notice to the director of one **Oregon location where Oregon leasing records are kept. The notice must include the physical address,** mailing address, [at least one] telephone number, and any other contact information in this state. [where the worker-leasing company maintains records of, and relating to, notices of leasing arrangements]

(2) Every licensed worker-leasing company [shall] **must** have at least one [authorized] representative of the worker-leasing company at the **Oregon location who is able** [designated place of business in this state knowledgeable] to respond to inquiries regarding leasing arrangements and client contracts.

(3) [For the purposes of this rule, those records that must be maintained at the worker-leasing company's in-state location include, but are not limited to] **The following records must be kept at the Oregon location:**

- (a) Copies of signed worker leasing notices;
- (b) Copies of signed notices of termination of leasing arrangements;
- (c) Copies of signed contracts between the worker-leasing company and clients; and
- (d) Payroll records for all workers which identify leased workers subject to coverage by the worker-leasing company; leased workers not subject to coverage by the worker[s]-leasing company; and, payroll records for all regular and temporary employees of the worker-leasing company.

(4) If the designated [in-state] **Oregon** location, or [authorized] representative is changed, the worker-leasing company [shall] **must** notify the director within 30 days of the effective date of the change.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

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436-050-0460 Disqualification, Suspension, Revocation of License

(1) The director may disqualify, suspend or revoke the worker-leasing company's license upon a determination that the worker-leasing company has failed to comply with **ORS 656.850, 656.855, or** these rules^[or has received more than one penalty per OAR 436-050]. Reasons for disqualification, suspension or revocation include, but are not limited to:

(a) Insolvency, whether the worker-leasing company's liabilities exceed their assets or the worker-leasing company cannot meet its financial obligations;

(b) If the worker-leasing company or any controlling person has been convicted of dishonest, fraudulent or illegal practices or conduct in any business or profession;

(c) If any controlling person has been convicted of a crime within the past 10 years, an essential element of which is fraud, **theft, or embezzlement of monies**;

(d) If the worker-leasing company has willfully violated or **has** failed ^[more than once] to comply with any provisions of ORS Chapters 654, 656, 659, 731 or 737; or **any provisions of these rules; or**

(e) If the worker-leasing company is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker-leasing business.

(2) For the purposes of this rule:

(a) **"Disqualification" and its variations means a refusal by the director to issue a license to a prospective worker-leasing company for failure to meet the requirements of ORS 656.850, 656.855, or these rules.**

(b) **"Suspension"** and its variations means a stopping by the director of the worker-leasing company's authority to provide leased workers to clients for a specified period of time.

(b)(c) **"Revocation"** and its variations means a permanent stopping by the director of the worker-leasing company's authority to provide leased workers to clients.

(c)(d) **"Show-cause hearing"** means an informal meeting with the director in which the worker-leasing company shall be provided an opportunity to be heard and present evidence regarding any proposed orders by the director to suspend or revoke a worker-leasing company's authority to provide leased workers to clients.

(3) Suspension or revocation under this rule will not be made until the worker-leasing company has been given notice and the opportunity to be heard through a show-cause hearing before the director and "show cause" why it should be permitted to continue to be licensed as a worker-leasing company.

(4) A show-cause hearing may be held at any time the director finds that a worker-leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.

(5) Following a show-cause hearing, the director may rescind the proposed order if the worker-leasing company establishes to the director's satisfaction its ability and commitment to comply with ORS **chapter** 656 and these rules.

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(6) A suspension may be in effect for a period of up to two years.

(7) After a revocation of a worker-leasing company's authority to provide leased workers to clients has been in effect for five years or longer, it may reapply for license.

(8) Appeal of proposed and final orders of suspension or revocation issued under this rule may be made as provided in OAR 436-050-0008 and OAR 436-001.

(9) Notwithstanding section (3) of this rule, the director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker-leasing company fails to maintain workers' compensation coverage; or if the director finds there is a serious danger to public health or safety.

(10) A disqualification, suspension or revocation[issued in accordance with this rule shall] **will** apply to any new entity created from the **disqualified, suspended, or revoked** entity through the sale, transfer or conveyance of ownership interest or of the entity's assets to another entity which takes over its operations.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
 Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01
Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0470 Monitoring/Auditing

(1) The division [shall] **will** monitor and [may] conduct periodic audits of employers as necessary to ensure compliance with the worker-leasing company licensing and performance requirements.

(2) All pertinent records of the worker-leasing company [as] required by **these rules** [OAR 436-050-0450, including but not limited to payrolls and employment records, client contracts, employee contracts, notices of leasing arrangements and cancellations and endorsements thereto, shall] **must** be disclosed upon request of the director.

(3) Pursuant to ORS 656.726 and 656.758, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers [shall] **must** provide the director with all pertinent books, records and payrolls upon request.

(4) For the purposes of this rule, both the worker-leasing company and [the worker-leasing] **its clients** shall be considered employers.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 4/1/94 as Admin. Order 94-052, eff. 5/1/94
 Amended 3/8/96 as WCD Admin. Order 96-057, eff. 4/1/96
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Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03