

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

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EFFECTIVE JUNE 1, 2005

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NOTE: Only adopted, amended, and repealed rules are included in this document: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

436-050-0003 Applicability of Rules

- (1) These rules are effective [January 1, 2004] **June 1, 2005**, 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.
 - (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.

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- (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) 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
Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04
Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

436-050-0440 Qualifications, 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 other legal entity 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] **2,050.**

(2) Each applicant for initial license or renewal as a worker-leasing company must submit an application for license on Form 440-2466. The form and accompanying documentation must include:

- (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;
- (g) Assumed business names;

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- (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 Department, 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;
 - (q) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS chapter 654, *The Oregon Safe Employment Act*, and collect the information necessary to establish each client's experience rating; and
 - (r) A notarized signature of an authorized representative of the applicant.
- (3) Incomplete or incorrectly completed application packages will be rejected and 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.

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(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
 Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04
Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

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. 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 to comply with any provisions of ORS Chapters 654, 656, 659, 659A, 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.

(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.

(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.

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(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.

(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 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
Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

436-050-0480 Assessment of Civil Penalties

(1) The director may assess a civil penalty against an employer who fails to respond to requests for information and fails to meet the requirements of 436-050-0470. The matrix attached to these rules in Appendix "A" will be used in assessing these penalties. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(2) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty based on the matrix in Appendix "B", attached to these rules.

(3) An employer who is found to be operating a worker leasing company without having obtained a license or having failed to renew a license pursuant to ORS 656.850(2), may be assessed a civil penalty based on the matrix attached to these rules in Appendix "C".

(4) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month in which an employer provides leased workers to a client without having first obtained a worker leasing license.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855
Stats. Implemented: ORS 656.850 and 656.855
Hist: Filed 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04
Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

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APPENDIX A

OAR 436-050-0480

Penalty Matrix For Failure To Respond To Information Requests

NUMBER OF VIOLATIONS

	1	2	3	4	5+
NUMBER OF DAYS LATE					
1-7	\$0	\$50	\$100	\$200	\$300
8-14	\$50	\$100	\$200	\$400	\$800
15-21	\$100	\$200	\$400	\$800	\$1000
22+	\$200	\$400	\$800	\$1000	\$1250

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APPENDIX B

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Penalty Matrix For Recordkeeping Violations

NUMBER OF COMPLIANCE REVIEWS/AUDITS

TYPE OF RECORD	1	2	3	4
Signed client contract	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max
Worker Leasing Notice Filed With WCD In 14 Days	\$100 each violation \$500max	\$150 each violation \$750 max	\$200 each violation \$1000 max	\$300 each violation \$1500 max
Worker Leasing Notice In File	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max
Effective Date On Worker Leasing Notice Same As On Client Contract	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max
Cancellation of Worker Leasing Notice In File	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max

APPENDIX C

OAR 436-050-0480

ORS 656.850 (2)

Penalty Matrix For Operating as a Worker Leasing Company Without a License

MONTHS

1 MONTH	2-3 MONTHS	4-[6] 5 MONTHS	[7] 6+ MONTHS
[\$250] <u>\$500</u>	[\$500] <u>\$1,000</u>	[\$1000] <u>\$1,500</u>	\$2000