

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
CHAPTER 436, DIVISION 050**

EMPLOYER/INSURER COVERAGE RESPONSIBILITY

EFFECTIVE MAY 1, 1994

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**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
OAR 436, DIVISION 050**

436-50-001 Authority for Rules

These rules are promulgated under the Director's authority contained in ORS 656.407, 656.430, 656.455, 656.726, 656.850, 656.855, 731.475 and Oregon Laws 1989, c 762 Sect. 1a (House Bill 2320).

Stat. Auth: ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.017, ORS 656.018, ORS 656.021, ORS 656.023, ORS 656.027, ORS 656.029, ORS 656.031, ORS 656.037, ORS 656.039, ORS 656.126, ORS 656.128, ORS 656.140, ORS 656.403, ORS 656.407, ORS 656.419, ORS 656.423, ORS 656.427, ORS 656.430, ORS 656.434, ORS 656.440, ORS 656.443, ORS 656.447, ORS 656.455, ORS 656.614, ORS 656.745, ORS 656.750, ORS 656.850, ORS 656.855 and ORS 731.475

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76 as Rules 436-51-001 and 436-51-201
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(Temporary) as Rule 436-51-130, (436-55-060)
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Renumbered from OAR 436-51-001, January 1, 1986
Amended 12/12/85 as WCD Admin. Order 9-1985, eff. 1/1/86
Amended 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
Amended 4/1/94 as WCD Admin. Order 94-052, eff. 5/1/94

436-50-003 Applicability of Rules

(1) These rules are effective May 1, 1994, to carry out the provisions of:

- (a) ORS 656.017 - Employer required to pay compensation and perform other obligations and 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; notice required; exception.
- (g) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.
- (h) ORS 656.430 - Certification of self-insured employer; effective date.
- (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 penalty for inducing failure to report claims; failure to pay

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assessments; failure to comply with Director rules or orders; amount; procedure.

(n) ORS 656.850 and 656.855 - Worker-leasing companies.

(o) ORS 731.475 - Insurer's Instate Location.

(2) These rules apply to any person performing as a worker leasing company on or after the effective date of these rules.

(3) Notwithstanding subsection (2) of this rule, the following shall apply to any worker leasing company with client contracts in effect on the effective date of these rules:

(a) Such worker leasing companies shall have 30 days from the effective date of these rules within which to submit an application for license in accordance with OAR 436-50-440; and

(b) Such worker leasing companies shall have 30 days from the effective date of its license within which to submit notice of lease arrangements to the director, in accordance with OAR 436-50-410.

Stat. Auth: ORS 656.017, ORS 656.029, ORS 656.126, ORS 656.407, ORS 656.419, ORS 656.423, ORS 656.427, ORS 656.430, ORS 656.434, ORS 656.443, ORS 656.447, ORS 656.455, ORS 656.745, ORS 656.850, ORS 656.855 and ORS 731.475

Stats. Implemented: ORS 656.704 and ORS 656.726(3)

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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

436-50-005 Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "Assessments/Contributions" means moneys due the Department under ORS 656.506, ORS 656.532 and ORS 656.538, and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600).

(2) "Audited Financial Statement" means a financial statement audited by an outside accounting firm.

(3) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.

(4) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(5) "Complete Records" means records that segregate and show specifically for each employer the amounts due from the employer and paid by the insurer or self-insured employer for premiums for insurance coverage, premium assessments, assessment/contributions and any other moneys due the Department.

(6) "Compliance" means the Compliance Section of the Workers' Compensation

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Division of the Department of Consumer and Business Services.

(7) "Controlling Person" means an officer or Director of a corporation offering worker-leasing services, a shareholder holding 10 percent or more of the voting stock of a corporation offering worker-leasing services, or a partner of a partnership offering worker-leasing services; or an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company offering worker-leasing services through the ownership of voting securities, by contract or otherwise.

(8) "Days" means calendar days unless otherwise specified.

(9) "Default" means failure of an employer, insurer or self-insured employer to pay the moneys due the Department under ORS 656.506, 656.532, 656.538, 656.612, 656.614, or Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600) at such intervals as the Director shall direct.

(10) "Department" means the Department of Consumer and Business Services.

(11) "Director" means the Director of the Department of Consumer and Business Services or the Director's delegate for the matter.

(12) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services, consisting of Compliance Section, Benefits Section, Dispute Resolution Section and Operations Section.

(13) "Double Coverage" means more than one guaranty contract in effect with the Department for the same period of time.

(14) "Employment Division" means the Employment Division within the State of Oregon Department of Human Resources.

(15) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.

(16) "Governmental Subdivision" means cities, counties, special districts created under ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.

(17) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(18) "Insurer" means a guaranty contract insurer.

(19) "Leased Worker" means any worker provided by a worker-leasing company on other than a "temporary basis" as described in OAR 436-50-420.

(20) "Premium Assessments" means moneys due the Department under ORS 656.612 and 656.614.

(21) "Process Claims" means the receipt, review and payment of compensation of claims of a worker.

(22) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

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(23) "Self-Insured Employer Group" means five (5) or more employers in the same industry certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-50-260 through 50-340.

(24) "State" means the State of Oregon.

(25) "Worker-Leasing Company" means a person who provides workers, by contract and for a fee, as established in ORS 656.850.

Stat. Auth: ORS 656.704 and ORS 656.726(3)

Stats. Implemented: ORS 656.704 and ORS 656.726(3)

Hist: Filed 4/12/76 as WCB Admin. Order 2-1976, eff. 4/12/76 (Temporary) as Rule 436-51-135
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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 9/30/82 as WCD Admin. Order 10-1982, eff. 10/1/82
Amended 6/30/83 as WCD Admin. Order 1-1983, eff. 7/1/83
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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

436-50-010 Assessment of Civil Penalties

(1) The Director, through Compliance and pursuant to ORS 656.745 and 656.750, may assess a civil penalty against an employer, insurer, self-insured employer or self-insured employer group.

(2) A self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$250 a day for each day a violation continues, for failure to comply with ORS 656.455 or OAR 436-50-175, 210, 220, or 300 of these rules.

(3) An employer, insurer, self-insured employer or self-insured employer group may be assessed a civil penalty of up to \$1,000 for violation of Oregon Administrative Rules 436-50-060, 50-070, 50-080, 50-100, 50-110, 50-150, 50-170, 50-175, 50-195, 50-200, 50-230, 50-260, 50-290 and 50-340.

(4) A worker-leasing company which does not comply with the requirements of OAR 436-50-400, 50-410, 50-420, 50-430, 50-450 or 50-455 may be assessed a civil penalty of up to \$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.

(5) Notwithstanding section (3) of this rule, an insurer, self-insured employer or self-insured employer group who does not comply with the coverage requirements of the statutes, Rules and Orders of the Director relating thereto may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three-month period.

(6) For the purpose of section (5), statutory coverage requirements include, but are not limited to, ORS 656.017, 656.031, 656.033, 656.039, 656.128, 656.135, 656.138, 656.140, 656.403, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443 and Oregon Laws 1981, c 535 Sect. 15 (House Bill 2600).

Stat. Auth: ORS 656.407, ORS 656.430, ORS 656.455, ORS 656.704, ORS 656.726(3), ORS 656.850 and ORS 656.855

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Stats. Implemented: ORS 656.017, 656.031, ORS 656.033, ORS 656.039, ORS 656.128, ORS 656.135, ORS 656.138, ORS 656.140, ORS 656.403, ORS 656.407, ORS 656.419, ORS 656.423, ORS 656.427, ORS 656.430, ORS 656.434, ORS 656.443, ORS 656.447, ORS 656.455, ORS 656.614, ORS 656.745, ORS 656.750, ORS 656.850, ORS 656.855 and ORS 731.475

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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

436-50-400 Responsibility for Providing Coverage under a Lease Arrangement

(1) Every worker-leasing company providing workers to a client shall satisfy the requirements of ORS 656.017 and 656.407.

(2) Every worker-leasing company providing leased workers to a client shall also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active guaranty contract on file with the Director. In that case, the client's guaranty contract will be deemed to provide insurance coverage for all leased workers and subject workers of the client.

(3) If the client allows the guaranty contract to terminate and continues to employ subject workers or has leased workers, the client shall be considered a noncomplying employer unless the worker leasing company has made the filing with the Director as provided in OAR 436-50-410(1).

(4) A client can only obtain leased workers from one worker-leasing company at a time unless the client has an active guaranty contract on file with the Director.

Stat Auth: ORS 656.704, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-410 Notice to Director of Lease Arrangement; Termination

(1) A worker-leasing company shall file written notice with the Director that it is providing leased workers to a client and workers' compensation coverage. The notice 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 be filed within 14 days after the effective date of the lease arrangement or contract.

(2) A worker-leasing company may terminate its obligation to provide workers' compensation coverage by giving to 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 be effective not less than 30 days after the notice is received by the Director. Notice to the client under this section shall be given by mail, addressed to the client at its last-known address. If the client is a partnership, notice may be given to any of the partners. If the client is a corporation, notice may be given to any agent or officer of the corporation upon whom legal process may be served.

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Stat Auth: ORS 656.704, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-420 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 a written contract which states the period of time the worker will be provided and the worker is provided under one or more of the following conditions:

- (a) To replace an absent worker who will return, such as during a maternity leave, vacation, jury duty, or illness;
- (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 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; 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, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-430 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, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-440 Qualifications and Applications 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 legal entity authorized to conduct business in

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this state;

- (b) Maintain workers' compensation coverage pursuant to ORS 656.017;
- (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 in a form and format as prescribed by bulletin which includes but may not be limited to:

(a) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS Chapter 654 and collect the information necessary to establish each client's experience rating.

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

(3) 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, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-450 Recordkeeping

(1) Every licensed worker-leasing company shall designate and give notice to the Director of one location and mailing address 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 have at least one authorized representative of the worker-leasing company at the designated place of business in this state.

(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:

- (a) Copies of signed notices of leasing arrangements;
- (b) Copies of signed notices of termination of leasing arrangements;
- (c) Copies of signed contracts between the worker-leasing company and clients;
- (d) Copies of signed contracts between the worker-leasing company and its workers; and
- (e) 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 workers leasing company; and, payroll records for all regular and temporary employees of the worker-leasing company.

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

Stat Auth: ORS 656.704, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

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436-50-455 Reporting Requirements of a Self-Insured Worker-Leasing Company

(1) A self-insured worker-leasing company shall maintain and report to the National Council on Compensation Insurance separate statistical data for each client whose coverage is provided by the self-insured employer. Reporting shall be according to the uniform statistical plan prescribed by the Director according to ORS 737.225(4).

(2) Records relating to the client statistical data for self-insured worker-leasing companies shall be made available for review by the National Council on Compensation Insurance upon request.

Stat Auth: ORS 656.704, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-460 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 these rules or repeatedly has received penalties per OAR 436-50-010(4). 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;

(d) If the worker-leasing company has willfully or repeatedly violated or failed to comply with any provisions of ORS Chapters 654, 656, 659, 731 or 737; 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) "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) "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) "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

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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 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 436-050-008 and OAR 436-01.

(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, in accordance with OAR 436-01-290.

(10) A disqualification, suspension or revocation issued in accordance with this rule shall apply to any new entity created from the suspended 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, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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

436-50-470 Monitoring/Auditing

(1) The division shall 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 OAR 436-50-450, including but not limited to payrolls and employment records, client contracts, employee contracts, notices of leasing arrangements and cancellations and endorsements thereto, shall be disclosed upon request of the Director.

(3) Pursuant to ORS 656.726(8) and 656.758, the Director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers shall provide the Director with all pertinent books, records and payrolls upon request.

Stat Auth: ORS 656.704, ORS 656.726(3), ORS 656.850 and ORS 656.855

Stats. Implemented: ORS 656.850 and ORS 656.855

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