

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 JANUARY 23, 1998

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 050

NOTE: Only adopted, amended, and repealed rules are included in this document:

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436-050-0003 Applicability of Rules

- (1) These rules are effective [April 1, 1996] **January 23, 1998**, 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.
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 - (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.

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(l) ORS 656.455 - Records location and inspection.

(m) ORS 656.745 - Civil penalty for inducing failure to report claims; failure to pay 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 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, 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)

Hist: Filed 12/19/75 as WCB Admin. Order 18-1975, eff. 1/1/76, as Rule 436-51-001
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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
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

436-050-0008 Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005[(20)] **(21)**, including SAIF Corporation as a designated processing agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS Chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the Director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting said hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within twenty (20) days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is received by

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the administrator within said twenty (20) days of receipt of notice.

(3) Any party as described in section (1) aggrieved by an action or order of the Director or division pursuant to these rules, other than as described in section (2), where such action or order qualifies for review by hearing before the Director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(l). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the Director or the Director's designee.

(c) 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 30 days of issuance of the proposed order.

(4) Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the Director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the Director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the Director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before the Director pursuant to ORS 183.310.

(e) Any request for a contested case hearing before the Director regarding a review determination made pursuant to this section must comply with the procedures provided in section (3) above.

Stat. Auth: ORS 656.704, ORS 656.726(3) and ORS 656.745

Stats. Implemented: ORS 656.254, ORS 656.735, ORS 656.745 and ORS 656.750

Hist: Filed 12/19/75 as WCB Admin. Order 1-1975, eff. 1/1/76 as Rule 436-58-055
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Amended 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82

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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 1/9/98 as WCD Admin. Order 98-050, eff 1/23/98

436-050-0045 Non-Subject Workers

(1) As used in ORS 656.027(1):

(a) "Private employment contract" means direct employment of the worker by the owner of the private home.

(b) As used in this rule, "owner of the private home" means any person who occupies and either owns or rents the private home, or any person related by blood or marriage to that person, or any person who by direction of that person or by order of a court has become responsible for managing the household affairs of that person.

(2) As used in ORS 656.027[(18)]**(19)**:

(a) "A person performing foster parent duties" means any person certified by the Children's Services Division under ORS Chapter 418 as a foster parent, or any person employed by that person in the operation of a foster home as defined in ORS Chapter 418 and any rules promulgated thereunder.

(b) "A person performing adult foster care duties" means any person licensed by the Senior and Disabled Services Division or the Mental Health and Developmental Disability Services Division to operate an adult foster home, or any person employed by the operator to perform services of assistance to the residents of the adult foster home.

(3) As used in this rule, "adult foster home" means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

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

Stats. Implemented: ORS 656.027

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)

Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92.

Amended 1/9/98 as WCD Admin. Order 98-050, eff 1/23/98

436-050-0050 Corporate Officers, Partnerships; Limited Liability Company Members; Subjectivity

(1) A corporate officer who is also a Director of the corporation and has a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officer, is a nonsubject worker pursuant to ORS 656.027[(9)]**(10)**.

(2) Notwithstanding section (1) of this rule, if the activities of the corporation involve the commercial harvest of timber or construction work regulated by the Construction Contractors Board (CCB) per ORS Chapter 701 **or landscape work regulated by the State Landscape Contractors Board (LCB) per ORS 671.510 to 671.710** and where the corporation is registered with the CCB **or licensed by the LCB**, the following provisions apply:

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(a) If all officers are qualified members of the same family, those officers who are directors of the corporation and who have a substantial ownership interest in the corporation may elect to be nonsubject workers regardless of the number of such officers.

(b) In all other circumstances, the maximum number of exempt corporate officers for the corporation shall be whichever is greater of the following:

- (A) Two eligible officers; or
- (B) One eligible officer for each 10 corporate employees.

(c) If a corporation has a variable or fluctuating number of employees, the number of corporate employees for purposes of subsection (2)(b)(B) of this rule is the average number of full time equivalent corporate employees on the last day of each calendar month of the preceding calendar year.

(d) Each corporation shall designate in writing which of its eligible officers are to be exempt from coverage. Such designations shall remain in effect until the corporation files a revised written designation, to be effective upon receipt. An insured corporation shall file this designation with its insurer. A self-insured corporation shall file this designation with the Department. If a corporation does not file its initial designation, or if a corporation is noncomplying, then the corporation's exempt officers shall be determined in the order of the following list:

- (A) President;
- (B) Secretary, if any;
- (C) Vice President, if any;
- (D) Secretary/Treasurer, if any;
- (E) Treasurer, if any;
- (F) All other Officers, if any.

(e) If there is more than one person in any of the offices listed in paragraph (2)(d)(A) through (F) of this rule, the sequence of those persons will be determined by whose birthday falls earlier in a year.

(f) Noncomplying corporations, regardless of the number of employees, are limited to two exempt officers, to be determined in accordance with subsection (2)(d) of this rule.

(g) A corporation without workers' compensation coverage, of which every corporate officer is also a Director of the corporation, has a substantial ownership interest in the corporation, and is a qualifying member of the same family shall not be considered noncomplying. All such officers shall be presumed to have elected to be nonsubject workers.

(3) Notwithstanding section (1) of this rule, if the activities of the corporation are conducted on land that receives farm use tax assessment, all individuals identified as directors in the corporate bylaws are nonsubject workers pursuant to ORS 656.027(9), regardless of ownership interest, provided the directors are members of the same family, whether related by

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blood, marriage or adoption.

(4) If partnerships and limited liability companies (LLC) perform construction work regulated by the CCB per Chapter 701 **or landscape work regulated by the State Landscape Contractors Board (LCB) per ORS 671.510 to 671.710** and are registered with the CCB **or licensed by the LCB**, the following provisions apply:

(a) If all partners or members are qualifying members of the same family, those partners or members who have a substantial ownership interest in the business may elect to be nonsubject workers regardless of the number of such partners or members.

(b) In all other circumstances, the maximum number of exempt partners or members shall be whichever is greater of the following:

(A) Two eligible partners or members; or

(B) One eligible partner or member for each 10 partnership or LLC employees.

(c) If the partnership or LLC has a variable or fluctuating number of employees, the number of employees for the purposes of paragraph (4)(b)(B) of this section is the average number of full time equivalent employees on the last day of each calendar month of the preceding calendar year.

(d) Each partnership or LLC shall designate in writing which of its eligible partners or members are to be exempt from coverage. Such designations shall remain in effect until the business entity files a revised written designation, to be effective upon receipt. An insured entity shall file this designation with their insurer. A self-insured entity shall file this designation with the Department. If the entity does not file its initial designation, or if the entity is noncomplying, then the entity's exempt partners or members shall be determined in the order of the following:

(A) Partner or member with the largest ownership interest

(B) Partner or member with the next largest ownership interest, and so on, in descending order.

(e) If there is more than one person with the same ownership interest per paragraph (4)(d)(A) through (B) of this section, the sequence of those persons will be determined by whose birthday falls earlier in a year.

(f) Noncomplying partnerships or LLCs, regardless of the number of employees, are limited to two exempt persons, to be determined in accordance with subsection (4)(d) of this rule.

(g) A partnership or LLC without workers' compensation coverage, of which every partner or member has a substantial ownership interest in the entity and is a qualifying member of the same family shall not be considered noncomplying. All such partners or members shall be presumed to have elected to be nonsubject workers.

(5) Notwithstanding sections (1), (2) and (4) of this rule, if a corporation, partnership, or limited liability company with more than one member performs work subject to regulation by the CCB **or the LCB** but has failed to register with the CCB **or obtain a license from the LCB**, the

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respective corporate officers, partners, and members are deemed ineligible for exemption under ORS 656.027 while directly engaged in performing such work.

(6) For purposes of this rule:

(a) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(b) "Director" means a person elected or appointed to a corporation's board of directors in accordance with its articles of incorporation or bylaws.

(c) "Eligible officer" means a corporate officer who is also a Director of the corporation and who has a substantial ownership interest in the corporation.

(d) "Eligible partner" or "eligible member" means a partner or member who has substantial ownership in the business entity.

(e) "Noncomplying" means an employing legal entity of subject workers which is in violation of ORS 656.017(1);

(f) "Qualifying member of the same family" means persons who are members of the same family and who each bear one of the following relationships to one of the others: parent, daughter, son, daughter-in-law, son-in-law, grandchild, spouse, sister or brother;

(g) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all owners or ten percent, whichever is less.

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

Stats. Implemented: ORS 656.027

Hist: Filed 2/10/82 as WCD Admin. Order 4-1982, eff. 2/15/82
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Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temp)
Amended 1/10/92 as WCD Admin. Order 2-1992, eff. 2/1/92
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

436-050-0055 Extraterritorial Coverage

(1) Employers from other states may bring their workers into Oregon to work without providing Oregon workers' compensation coverage if:

(a) The employer has obtained workers' compensation insurance in that other state to cover those persons while working in Oregon;

(b) The extraterritorial provisions of ORS 656.001 to 656.794 are recognized in that other state;

(c) Oregon employers are likewise exempted from providing coverage in that other state; and

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(d) The [work at a single location does not exceed 30 work days in a calendar year] **worker is temporarily within this state doing work for the employer.**

(2) [An employer which will have employees from another state working at a single location within Oregon on more than 30 days in a calendar year must provide Oregon workers' compensation coverage for employees working at that location. Such coverage shall be effective prior to the work commencing.

(3) For the purposes of this section, "single location" means a location within this state where a single project will be completed, i.e. a project where several buildings are being constructed on adjoining property or construction of a logging road regardless of length. It does not include a location on a sales or delivery route and does not include multiple but unrelated contracts let by separate business entities, which may be performed at one physical location.] **Criteria to be used in determining whether a worker is "temporarily within this state" includes, but is not limited to:**

- (a) The extent to which the worker's work inside this state is temporary;**
- (b) The intent of the employer;**
- (c) The understanding of the worker;**
- (d) The location of the employer and its facilities;**
- (e) The circumstances surrounding the worker's work assignment;**
- (f) The state laws and regulations to which the employer is otherwise subject; and**
- (g) The residence of the worker.**

[(4)] **(3)** Within 30 days after **coverage of an Oregon** employer[s coverage] is effective, the insurer providing the coverage shall notify the employer in writing of the provisions of ORS 656.126 and OAR 436-050-0055.

[(5)] **(4)** Notwithstanding sections (1) [through (3)] **and (2)** of this rule, all employers working under public contract are subject employers and must comply with ORS 656.017.

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

Stats. Implemented: ORS 656.126

Hist: Filed 12/22/89 as WCD Admin. Order 5-1989, eff. 1/1/90
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Amended 1/9/98 as WCD Admin. Order 98-050, eff. 1/23/98

436-050-0070 Requalifying Required when Employer Entity Changes

(1) An employer shall, if there is any change in the employing legal entity, requalify with Compliance in accordance with ORS 656.017. An employer shall within 10 days after a change in legal entity occurs, notify its insurer of such change. A change in legal entity includes, but is not limited to:

- (a) [When a partner joins or leaves the partnership;
- (b) When a member joins or leaves the joint venture or association;
- (c) When the employer is a sole proprietorship, partnership or corporation and changes to a sole proprietorship, partnership or corporation.

(b) When partners of a partnership establish another separate and distinct partnership.

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(2) When a change in the legal entity of an insured employer occurs, the insurer shall, within 30 days, file a guaranty contract with Compliance as evidence of the change.

(3) Even though there is no change in legal entity, if there is a disassociation or admission of a partner of a partnership, the employer shall within 10 days after the change, notify its insurer of such change. The insurer shall, within 30 days of being notified of the change, file an endorsement to the guaranty contract on file that sets forth the disassociation or admission of the partner and the effective date of such disassociation or admission.

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

Stats. Implemented: ORS 656.419

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