Workers' Benefit Fund Assessment Oregon Administrative Rules Chapter 436, Division 070

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Effective January 2, 2006

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EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 070

436-070-0001 Authority for Rules

(1) These rules are adopted under the director's authority contained in ORS 656.726 and 656.506.

Stat Auth: ORS 656.726, 656.506
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0002 Purpose

The purpose of these rules is to:

(1) Prescribe the manner and intervals in which the assessment rate is to be calculated;

(2) Prescribe the manner and intervals employers are to withhold, file, and remit assessments; and

(3) Prescribe the conditions affecting the adjustment of the assessments as authorized by ORS 656.506.

Stat Auth: ORS 656.506
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0003 Applicability of Rules

(1) These rules govern the Workers' Benefit Fund assessment pursuant to ORS 656.506 on or after the effective date of these rules.

(2) These rules apply to all subject employers as defined in ORS 656.005 and any otherwise non-subject employer who elects coverage pursuant to ORS 656.039.

(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 656.506
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
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Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0005 Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions in the Workers' Compensation Law and as follows:

(1) "Assessments" means the funds due from employees and employers pursuant to ORS 656.506.

(2) "Employee" means a subject Oregon worker as defined in ORS 656.005 and any

otherwise nonsubject worker for whom coverage is elected under ORS 656.039.

(3) "Fund" means the Workers' Benefit Fund as created in ORS 656.506.

(4) "Fund balance" means the balance of the fund after revenue and investment income has been added and expenditures have been subtracted.

Stat Auth: ORS 656.506
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
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Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0008 Administrative Review

(1) Contested case hearings regarding sanctions and civil penalties: Any employer as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740 .

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

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) [Contested case h]**H**earings regarding estimation actions and orders: **Under ORS 656.704(2),** [A]**a**ny employer [as defined by ORS 656.005 aggrieved by] **who disagrees with** an action or order of the director [pursuant to] **under** these rules, other than as described in section (1), may request [review pursuant to ORS 183.310 through 183.690 and OAR 436-001. The process for review will be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator] **a hearing by filing a request for hearing as provided in OAR 436-001-0019** within 30 days of the **mailing date of the order or notice of** action [or from the date of mailing or other service of an order]. **OAR 436-001 applies to the hearing.**

[(b) The hearing will be conducted by an administrative law judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is 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.]

Stat Auth: ORS 656.735 and 656.740
Stats. Impltd: ORS 656.704, OL 2005 ch 26, 656.735, 656.740
Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
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Amended 12/3/03 as WCD Admin. Order 03-075, eff. 1/1/04
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended 10/19/05 as WCD Admin. Order 05-064, eff. 1/2/06

436-070-0010 Assessment Rate: Method and Manner of Determining

Prior to November 15 each year, the director will compute and notify employers of the

following calendar year's assessment rate necessary to meet the needs of the fund. Factors considered in developing the rate include, but are not limited to:

(1) The estimated annual fund expenditures and revenues;

(2) The fund balance requirements;

(3) The estimated annual hours worked per employee;

(4) The estimated number of employees covered by workers' compensation insurance; and

(5) Other records relating to fund expenditures and revenues.

Stat Auth: ORS 656.506
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
Amended 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
Amended 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96
Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0020 Assessments: Manner and Intervals for Filing and **Payment**

(1) Every employer must compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 by the number of hours or parts of an hour the employee worked in the pay period.

(a) If actual hours worked are not tracked, an employer may either calculate the assessments using a flat rate, use contract information stating the number of hours an employee works, or come up with a reasonable method for calculating hours worked. If the flat rate method is used, the calculation must be based on 40 hours per week for employees paid weekly or biweekly, or 173.33 hours per month for employees paid monthly or semi-monthly.

(b) The employer will retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer will be assessed an amount equal to the amount retained from each employee.

(2) Every employer must file a report of employee hours worked and remit amounts due upon a combined tax and assessment report form prescribed by the Department of Revenue. The report must be filed with the Department of Revenue:

(a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

(b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

(3) For employers required to report quarterly, reports and payments are due on or before the last day of the first month after the close of each calendar quarter. For employers that report annually, reports and payments are due on or before the last day of January following the close of each calendar year.

(4) Employers who fail to timely and accurately file and remit assessments may be charged interest on all overdue balances at the rate established by ORS 82.010 and may be assessed civil penalties in accordance with OAR 436-070-0050.

(5) If an employer fails to file a report and remit assessments due timely and accurately, the director may send to the employer a written Failure to File Notice or Notice of Audit

Findings. The notice will include a warning that failure to timely and accurately resolve all issues addressed in the written notice may result in the imposition of a civil penalty. The director may coordinate with the Department of Revenue and Employment Department to provide written notice of failure to file.

(a) Within 30 days of the Failure to File Notice or the Notice of Audit Findings, the employer must file an accurate report and remit the assessments due, or otherwise resolve to the satisfaction of the director all issues identified in the written notice. If an employer fails to comply with the notice, the director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.

(b) Within 30 days of the Notice of Estimation, the employer must pay the director's estimated assessment or file and remit accurate assessment due. If the employer fails to comply with the notice, the director may send to the employer an Order of Default assessing all amounts due as calculated by the director.

(c) Within 30 days of the Order of Default, the employer must remit the estimated assessment due, unless the order is timely appealed as provided in OAR 436-070-0008.

(6) Employers or the director may initiate activity to resolve reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years. No calendar year limitation applies to cases involving fraud.

(7) When the director determines that the department has received moneys in excess of the amount legally due and payable or that it has received moneys to which it has no legal interest, the director will refund or credit the excess amount. For amounts less than $20, the director will refund to employers the excess amount only upon receipt of a written request from the employer or the employer's legal representative.

Stat Auth: ORS 656.506 and 82.010
Stats. Impltd: ORS 656.506 and 293.455
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Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0040 Monitoring/Auditing

(1) Employers must maintain payroll and employment records which reflect the total hours worked by all employees for the current calendar year plus three prior calendar years.

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

Stat Auth: ORS 656.726
Stats. Impltd: ORS 656.506
Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
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436-070-0050 Assessment of Civil Penalties

(1) The director pursuant to ORS 656.745 may assess a civil penalty against an employer.

(2) If the director finds any employer in violation of OAR 436-070 or an order of the

director, the employer may be subject to penalties pursuant to ORS 656.745 of not more than $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, will be considered a separate violation.

(3) An employer may be assessed a penalty for late filing or payment when received more than 10 calendar days after the due date established in OAR 436-070-0020(2). The penalty will be assessed at 10% of the outstanding balance, with a minimum of $50 for each violation up to $2,000. Penalties are in addition to interest and assessments owed.

Stat Auth: ORS 656.745(2)
Stats. Impltd: ORS 656.745
Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
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