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

Effective April 1, 2013

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NOTE: Significant revisions are marked with lines in the right margins.

HISTORY LINES: These rules include only the most recent "History" lines. A rule's history line shows when the rule was last revised and its effective date. To obtain a "Chapter 436 revision history index," please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of Oregon Administrative Rules (OAR): 436-070, Workers' Benefit Fund Assessment	))))	**ORDER OF ADOPTION No. 12-063**

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedures in ORS 183.335, amends OAR chapter 436, division 070.
On Oct. 12, 2012, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested people and legislators in accordance with ORS 183.335 and OAR 436-001-0009, and posted copies to its website. The Secretary of State included notice of the public hearing in its November 2012 *Oregon Bulletin*. On Nov. 27, 2012, a public hearing was held as announced. The record remained open for written testimony through Nov. 30, 2012.

SUMMARY OF RULE AMENDMENTS

These rule amendments:

Establish the hourly assessment rate that subject employers and any employers electing to provide workers' compensation coverage for their employees must pay to the Department of Consumer and Business Services for the Workers' Benefit Fund. Effective April 1, 2013, the rate will increase from 2.8 cents to 3.3 cents per hour worked.

FINDINGS

Having reviewed and considered the record and being fully informed, I make the following findings:

a) The applicable rulemaking procedures have been followed.

b) These rules are within the director's authority.

c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT

1) Amendments to OAR chapter 436, division 070 are adopted as administrative order No. 12-063 on this **7th day of December, 2012, to be effective April 1, 2013.**
2) A certified copy of the adopted rules will be filed with the Secretary of State.
3) A copy of the adopted rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within 10 days after filing with the Secretary of State.

DATED this 7th day of December, 2012.

/s/ John L. Shilts
John L. Shilts, Administrator
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division, 503-947-7810.

Distribution: Electronic mailing lists

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: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

436-070-0002 Purpose

(1) Prescribe the rate of the Workers' Benefit Fund assessment under ORS 656.506;

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

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

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

Stat Auth: ORS 656.506, 656.726(4)
Stats. Impltd: ORS 656.506
Hist: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended 12/7/12 as WCD Admin. Order 12-063, eff. 4/1/13

436-070-0003 Applicability of Rules

(1) These rules are effective April 1, 2013.

(2) These rules govern the Workers' Benefit Fund assessment under ORS 656.506.

(3) 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.

(4) 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, 656.726(4)
Stats. Impltd: ORS 656.506
Hist: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended 12/7/12 as WCD Admin. Order 12-063, eff. 4/1/13

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: 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) Hearings regarding estimation actions and orders: Under ORS 656.704(2), any employer who disagrees with an action or order of the director under these rules, other than as described in section (1), may request 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. OAR 436-001 applies to the hearing.

Stat Auth: ORS 656.735 and 656.740
Stats. Impltd: ORS 656.704, OL 2005 ch 26, 656.735, 656.740
Hist: Amended 10/19/05 as WCD Admin. Order 05-064, eff. 1/2/06

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

(1) All subject employers and any employer electing to provide workers' compensation coverage for its employees must pay an assessment rate of 3.3 cents per hour to the Department of Consumer and Business Services, under this rule division and ORS 656.506.

(2) Factors considered in developing the rate include, but are not limited to:

(a) The estimated annual fund expenditures and revenues;

(b) The fund balance requirements;

(c) The estimated annual hours worked per employee;

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

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

Stat Auth: ORS 656.506, 656.726(4)
Stats. Impltd: ORS 656.506
Hist: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended 12/7/12 as WCD Admin. Order 12-063, eff. 4/1/13

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)(a) If an employer fails to file a report or the director determines, based on the available data, that the report filed understates assessments, 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.

(b) 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.

(c) 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.

(d) 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 293.445
Hist: Amended 6/15/06 as WCD Admin. Order 06-057, eff. 7/1/06

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: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05

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: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05