

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 [FUNDING AND RESERVES] WORKERS' BENEFIT FUND

REVISION-MARKED COPY

[Bracketed 8 point text is deleted]; bold/underlined text is added

EFFECTIVE JANUARY 12, 1996

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 070

NOTE: Only adopted, amended, and repealed rules are included in this document:

RULE	PAGE
436-070-0002 Purpose.....	1
436-070-0003 Applicability of Rules	1
436-070-0005 Definitions.....	2
436-070-0008 Administrative Review	2
436-070-0010 Assessment Rate: Method and Manner of Determining	3
436-070-0020 Assessments: Manner and Intervals for Payment	3
436-070-0030 Assessments: Periods Prior to January 1, 1995 (<i>Repealed</i>)	5
436-070-0050 Assessment of Civil Penalties	5
436-070-0060 Issuance/Service of Penalty Orders.....	6

436-070-0002 Purpose

The purpose of these rules is to:

- (1) Prescribe the manner and intervals in which the assessment rate necessary to fund the [reserves] programs is to be calculated;
 - (2) Prescribe the manner and intervals employers are to withhold and remit assessments;
- and**
- (3) Prescribe the conditions affecting the [allocation] adjustment of the assessments as authorized by ORS 656.506[; and].

[(4) Prescribe the method of effecting such allocation.]

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

436-070-0003 Applicability of Rules

These rules apply to all assessments due and collected from [workers] employees and employers pursuant to ORS 656.506 on or after the effective date of these rules.

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Stats. Impltd: ORS 656.506

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
 [FUNDING AND RESERVES] **WORKERS' BENEFIT FUND**

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

436-070-0005 Definitions

Additional definitions are contained in ORS 656. As used in the rules, unless the context otherwise requires:

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

[(2) "Department" means the Department of Consumer and Business Services.]

[(3) "Director" means the Director of the Department of Consumer and Business Services or the director's delegate for the matter.]

[(4)] **(2)** "Employee" [has the meaning for that term provided in ORS 657.015] means a subject Oregon worker within the meaning of the Workers' Compensation Law.

[(5)] **(3)** "Employer" [has the meaning for that term provided in ORS 657.025] means a subject Oregon employer within the meaning of the Workers' Compensation Law.

(4) "Fund" means the Workers' Benefit Fund as established by Section 15, Chapter 641, Oregon Laws 1995.

[(6)] **(5)** "Fund balance" means the balance of [a reserve] the fund after revenue and investment income has been added and expenditures have been subtracted.

[(7)] **(6)** ["Reserves"] "Programs" mean[s] the Retroactive [Reserve] Program, Reemployment Assistance [Reserve] Program, Reopened Claims [Reserve] Program and Handicapped Workers' [Reserve] Program as established by ORS 656.506, 656.530, 656.622, 656.625 and 656.628.

Stat Auth: ORS 656.506

Stats. Impltd: ORS 656.506

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436-070-0008 Administrative Review

(1) Any party as defined by ORS 656.005(20) aggrieved by a proposed order or proposed assessment of civil penalty of the Director [or Division] issued pursuant to ORS 656.745 or 656.750 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 Director. 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 Director 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 the Director within said twenty (20) days of receipt of notice.

(2) 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 (1), where such action or order qualifies for review by hearing before the Director as a contested case, may request review

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
 [FUNDING AND RESERVES] **WORKERS' BENEFIT FUND**

pursuant to ORS 183.310 through 183.550 [as modified by these rules pursuant to ORS 183.315(1)]. 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 Director. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is received by the Director within thirty (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 thirty (30) days of issuance of the proposed order.

Stat Auth: ORS 656.735 and 656.740

Stats. Implt: ORS 656.735 and 656.740

Hist: Filed 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

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

(1) The Director shall [allocate] **deposit** the assessments collected pursuant to ORS 656.506 and these rules to the [Retroactive Reserve, Reemployment Assistance Reserve, Reopened Claims Reserve and Handicapped Workers' Reserve] **Worker Benefit Fund**.

(2) Prior to November 15 each year, the Director shall compute [a combined] **an** assessment rate necessary to meet the needs of the [reserves] **fund**. The [combined] assessment rate shall be preprinted on the [Department of Revenue] Oregon Quarterly [Combined] Tax Report and mailed to each employer. Factors considered in developing the rate [and determining the allocation] include, but are not limited to:

(a) The [combined] estimated annual [reserve] **fund** expenditures and revenues;

(b) The [reserve] fund balance requirements;

(c) The estimated annual hours worked per employee;

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

(e) Other records relating to [reserve] **fund** expenditures and revenues.

Stat Auth: ORS 656.506

Stats. Implt: 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

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

(1) [Every employer shall retain from the moneys earned by all employees one half (½) of the amount as determined in OAR 436-070-0010 for each hour or part hour worked. Such amounts shall not exceed two cents per hour or part of an hour worked. In addition, each employer shall be assessed an amount equal to that amount retained from the employee.] **Every employer shall compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 (2) by the number of hours or parts of an hour the**

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 [FUNDING AND RESERVES] WORKERS' BENEFIT FUND

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 shall 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 shall retain from the moneys earned by each employee one half (½) of the amount due. In addition, the employer shall be assessed an amount equal to the amount retained from each employee.

(2) Every employer shall make and file a quarterly report of employee hours worked and amounts due upon a combined quarterly **tax and assessment** report form prescribed by the Department of Revenue. The report shall be filed with the Department of Revenue at the times and in the manner prescribed in ORS 316.168 and 316.171. The assessments shall be reported and remitted as follows:

(a) Employers shall [report and] remit payment with [Form OTC] **an** Oregon Combined Tax Payment Coupon (**Form OTC**) as required by the [Oregon] Department of Revenue.

(b) Employers shall file [combined report Form OQ] **the** [] Oregon Quarterly [Combined] Tax Report[] (**Form OQ**) [and Form 132 (Employee Detail Report)] each calendar quarter [if subject to state unemployment].

(c) Employer reports and payments are due on or before the last day of the month after the close of each calendar quarter; provided, however, that when the due date specified falls upon a Saturday, Sunday, or a legal holiday, quarterly reports and payment shall not be due until the next business day. The date of receipt shall be determined in accordance with the provisions of ORS 293.660 **and ORS 305.820**.

(3) [Assessments are due for each hour or part of an hour the employee works. Withholdings and remittances may be based on total hours worked for each pay period. For any employees where records of actual hours worked are not maintained, an employer may base the assessments on 40 hours per week for employees paid weekly, or 173.33 hours per month for employees paid monthly or semi-monthly. If this method is used for workers' withholdings, it must also be used for employer's assessments, and vice versa.]

[(4)] Employers who fail to timely report and remit assessments [will] **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.

(a) [If hours worked are not reported and/or if no remittance is submitted by the employer] **If an employer fails to file a required quarterly report or remit assessments due by the 10th day of the second month following the end of the calendar quarter, the Department may coordinate with the Department of Revenue and Employment Department to send the employer at the employer's last known address a combined written notice (Failure to File Notice) warning the employer that subsequent failure to file a required report could result in the imposition of a late filing penalty.**

(b) If an employer fails to file a required quarterly report or remit assessments due within 30 days of the date of the Failure to File Notice, the Director may estimate the

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
 [FUNDING AND RESERVES] **WORKERS' BENEFIT FUND**

assessments due, **including penalties and interest.** [Estimated hours worked shall be calculated using the payroll reported to the Employment Department, estimated annual hours worked per employee in the subject industry, and indicated specific employer unemployment insurance covered employment.]

(b) If a report is filed that is inconsistent or inaccurate with regard to information concerning estimated annual hours worked per employee in the subject industry, indicated specific employer unemployment insurance covered employment, and total employer payroll, the Director will calculate additional amounts due using the formula as specified in subsection (4)(a) of this rule, or based upon more specific information which may be available.]

(c) **The director will mail w**[w]ritten notice of the estimated assessments [due will be mailed] to the employer at the **employer's** last known address [on file with the director].

(d) **The employer shall file the required quarterly report and remit assessments due, including penalties and interest, or remit the** [All] estimated assessments, **including penalties and interest, within** [shall be due] 30 days from the mailing date of the **Director's** notice[.].
 [u]Unless appealed by the employer as provided in OAR 436-070-0008, **the director's notice shall be final.**

[(5) Failure of the employer to report and remit moneys due the Department under this rule does not relieve the insurer of the monetary liability established under ORS 656.419 for assessments due. The Department may look to the insurer for payments due under this rule when collection efforts against the insured employer have been exhausted.]

Stat Auth: ORS 656.506 and 82.010

Stats. Impltd: ORS 656.506

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436-070-0030 Assessments: Periods Prior to January 1, 1995

[(1) Collections of moneys due the Department pursuant to ORS 656.506 for periods prior to January 1, 1995 are the responsibility of the insurer. Insured employers, insurers, self-insured employers and self-insured employer groups shall report and pay such moneys to the Department following the same method, manner and form as prescribed in former OAR 436-85-010.]

(2) Failure of the employer to report and remit moneys due the Department under this rule does not relieve the insurers of their responsibility to report and pay those moneys due the Department.]

Stat Auth: ORS 656.506, 656.532 and 656.538

Hist: Filed 6/30/83 as WCD Admin. Order 3-1983, eff. 7/1/83
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Repealed 1/12/96 as WCD Admin. Order 96-050, eff. 1/12/96

436-070-0050 Assessment of Civil Penalties

(1) The Director pursuant to ORS 656.745 may assess a civil penalty against an employer [or insurer].

(2) An employer [or insurer] who fails to pay assessments or other payments due to the Director and is in default 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.

(3) An employer who fails to comply with the requirements of OAR 436-070-0020(2), may be assessed a civil penalty of up to \$2,000. When penalties are issued due to an employer's failure to pay assessments, the penalties will be assessed at 10% of the outstanding balance, with a minimum of \$50 for each violation. Penalties shall be in addition to interest and assessments owed.

Stat Auth: ORS 656.745(2)

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
[FUNDING AND RESERVES] WORKERS' BENEFIT FUND

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436-070-0060 Issuance/Service of Penalty Orders

(1) When the Director imposes a penalty under provisions of OAR 436-070-0050, the Order, including a notice of the party's appeal rights, shall be served on the party.

(2) The Order shall be served by:

(a) Delivering a copy to the party in the manner provided by Rule 7 of Oregon Rules of Civil Procedure, subsection (D)(2); or

(b) Sending a copy to the party by certified mail with instruction to deliver to the addressee only, return receipt requested. If the employer is a corporation, the certified mail may be addressed to any one of the persons named in Rule 7 of Oregon Rules of Civil Procedure (D)(3)(b)(i).

(3) Orders of the Director issued pursuant to these rules shall contain the following notice:

IF YOU DISAGREE WITH THIS ORDER, YOU MAY REQUEST A HEARING.
YOUR REQUEST MUST BE IN WRITING, DIRECTED TO THE DIRECTOR,
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, [LABOR AND INDUSTRIES BUILDING]
350 WINTER STREET NE, ROOM 21, SALEM, OREGON 97310.

THE REQUEST MUST SPECIFY THE GROUNDS UPON WHICH YOU CONTEST THE ORDER. THE REQUEST FOR HEARING MUST BE RECEIVED BY THE DEPARTMENT WITHIN 20 CALENDAR DAYS AFTER YOU RECEIVE THIS ORDER. IF YOU DO NOT FILE A REQUEST FOR A HEARING WITHIN THE TIME ALLOWED, THIS ORDER WILL BECOME FINAL AND WILL NOT BE SUBJECT TO REVIEW BY ANY AGENCY OR COURT.

Stat Auth: ORS 656.745(2)(b)

Hist: Filed 10/31/94 as WCD Admin. Order 94-060, eff. 1/1/95
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