

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Workers' Compensation Benefits Offset
Oregon Administrative Rules
Chapter 436, Division 100**

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

Effective January 1, 1998

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
WORKERS' COMPENSATION BENEFITS OFFSET**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 100**

436-100-0001 Authority for Rules

(1) These rules are promulgated under the director's authority contained in ORS 656.726 and 656.727.

Stat. Auth.: ORS 656.209, ORS 656.726 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0002 Purpose

The purpose of these rules is to establish requirements and procedures for the administration of offsetting permanent total disability benefits against social security disability benefits.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0003 Applicability of Rules

(1) These rules are effective [February 22, 1984] **January 1, 1998**, to carry out the provisions of ORS 656.209 and ORS 656.727.

(2) These rules apply to:

(a) Those workers receiving awards for permanent total disability and are eligible for and receiving federal social security disability benefits; and

(b) Injured workers whose period of disability under the Social Security Administration began on or after June 1, 1965.

(3) [These rules, when amended, will supersede Administrative Order WCD 4-1983 (Admin) adopted September 1, 1983.]

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 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84
Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98

436-100-0005 Definitions

(1) "Authorization" means an order issued by the Workers' Compensation Division directing the paying agent to offset the worker's permanent total disability benefits by the amount specified in the order.

(2) "Beneficiary" means an injured worker, and the husband, wife, child or dependent of a worker, who is entitled to receive payments under ORS 656.001 through ORS 656.794.

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(3) "Compliance Section" means the Compliance Section of the Workers' Compensation Division.

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

(5) **"Division" means the Workers' Compensation Division.**

[(5)] (6) "Federal Disability Benefit Limitation" means the amount determined pursuant to 42 USC 224(a) and Social Security Administration rules.

[(6)] (7) "Offset" means a reduction of permanent total disability benefits based upon the amount of federal social security disability benefits received by a worker.

[(7)] (8) "Paying agency or paying agent" means the self-insured employer or insurer paying benefits to the worker or beneficiaries.

[(8)] (9) "Permanent total disability benefits" means compensation to an injured worker awarded permanent total disability compensation under ORS 656.206.

[(9)] (10) "Worker" means any worker receiving permanent total disability benefits.

[(Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Workers' Compensation Division - Administration.)]

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98

436-100-0006 Administration of Rules

For the purpose of administration of these rules, orders of the Workers' Compensation Division are deemed orders of the director.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.209 and ORS 656.726

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0008 Administrative Review

(1) Any worker aggrieved by any offset authorization of the [Department] **division** may apply to the Workers' Compensation Division for a reconsideration of that authorization prior to requesting a hearing.

(2) Any party aggrieved may request a hearing pursuant to the provisions of ORS 656.283.

Stat. Auth.: ORS 656.726 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98

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436-100-0010 Criteria for Eligibility

(1) Permanent total disability benefits shall be offset by the workers' social security disability benefits. However, the total combined benefit, permanent total disability benefits plus social security disability benefits, shall not be offset to an amount less than the greater of:

- (a) The amount the worker would have received pursuant to ORS 656; or
- (b) The federal benefit limitation.

(2) Permanent total disability benefits shall not be paid by the paying agent in an amount greater than authorized by ORS Chapter 656.

(3) Offset of permanent total disability benefits shall be made by a paying agent only in an amount and as authorized by the director.

(4) Offset of permanent total disability benefits shall be authorized by the director only upon actual receipt of federal social security disability benefits by the injured worker.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0020 Requirements of Workers

(1) Workers entitled to receive permanent total disability benefits shall make application for federal social security disability benefits.

(2) Workers and eligible beneficiaries shall, upon department request, execute a release form authorizing the Social Security Administration to make disclosure to the department of such information regarding the injured workers as will enable the department to carry out the provisions of ORS 656.209 and these rules.

(3) Whenever there is a change in the federal social security beneficiary eligibility, the worker shall notify the Compliance Section.

(4) Upon request of the department, the worker may be required at any time to furnish additional information regarding social security disability benefits.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209 and ORS 656.727

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0030 Authorization of Offset; Effective Date

(1) Authorization issued by the department shall be directed to the paying agent with a copy to the injured worker.

(2) A paying agent making payment of permanent total disability benefits shall be entitled to social security disability offset only as authorized by the department.

(3) The department shall review the social security offset calculation when notified of a change in the status of a worker subject to social security offset. An amended authorization will be issued, if necessary.

(4) Whenever there is a change in eligibility status of the worker or any one of his/her beneficiaries receiving benefits for permanent total disability subject to offset, the paying agent shall notify the Compliance Section.

(5) The paying agent will, immediately upon the death of a worker, terminate payment of previously authorized permanent total disability benefits offset and commence payment of other compensation due under ORS

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Chapter 656, if any.

(6) The effective date of offset will be the effective date established in the authorization.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209 and ORS 656.727

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84

436-100-0040 Sanctions Against Worker for Failure to Cooperate With the Department

(1) Any worker entitled to receive permanent total disability benefits who fails to comply with these rules shall be subject to suspension of benefits until the worker has complied.

(2) If a worker fails to comply with these rules, a written demand shall be made upon him by personal service or registered mail. If the worker fails to comply within 20 days of receipt of the demand, the director may authorize suspension of benefits until the worker complies.

(3) An Order of Suspension of benefits shall continue in force from the date issued until the date the worker actually complies with these rules.

(4) No compensation shall become due or shall be payable during a period of suspension of benefits.

Stat. Auth.: ORS 656.209 and ORS 656.727

Stats. Implemented: ORS 656.209 and ORS 656.727

Hist: WCB 7-1987, f. 6-5-78, ef. 6-6-78
WCD 4-1983 (Admin) (Temp), f. & ef. 9-1-83;
WCD 2-1984 (Admin), f. & ef. 2-22-84