Employer-at-Injury Program Oregon Administrative Rules Chapter 436, Division 105

Effective March 1, 2015

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

HISTORY LINES: These rules include only the most recent "History" lines. The history line shows when the rule was last revised (or "filed" if the rule has never been revised) and its effective date. To obtain a comprehensive history for OAR chapter 436, 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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OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 105

436-105-0001 Authority for Rules

The director has adopted OAR Chapter 436, Division 105 under the authority of ORS 656.622 and 656.726.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0002 Purpose of Rules

(1) The Employer-at-Injury Program encourages the early return to work of injured workers by providing incentives to employers.

(2) The Employer-at-Injury Program is activated by the employer and administered by the insurer.

(3) The program consists of Wage Subsidy, Worksite Modification, and Employer-at-Injury Program Purchases.

(4) These rules explain:

(a) The assistance and reimbursements available from the Employer-at-Injury Program;

(b) Who is qualified for the assistance and reimbursement; and

(c) How to receive assistance and reimbursements.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07

436-105-0003 Applicability of Rules

(1) These rules apply to:

(a) All individual Employer-at-Injury programs started on or after the effective date of these rules, unless otherwise provided in subsections (b) or (c);

(b) All wage subsidy reimbursement requests when the wage subsidy period began on or after the effective date of these rules; and

(c) All reimbursement requests received by the division on or after the effective date of these rules for worksite modification or program purchases, regardless of when the purchase was made.

(2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012
Amended 4/12/13 as Admin. Order 13-054, eff. 7/1/13

436-105-0005 Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Consumables" means purchases required to support the functioning of tools or equipment utilized during transitional work.

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

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Employer-at-Injury" means the organization that employed the worker when the worker:

(a) Sustained the injury or occupational disease;

(b) Made the claim for aggravation; or

(c) Requested an Own Motion opening under ORS 656.278.

(7) "Fund" means the Workers' Benefit Fund.

(8) "Insurer" means the insurance company or self-insured employer responsible for the workers' compensation claim.

(9) "Premium" means the monies paid to an insurer for the purpose of purchasing workers' compensation insurance.

(10) "Regular employment" means the employment the worker held at the time of:

(a) Injury;

(b) The claim for aggravation; or

(c) Own Motion opening under ORS 656.278.

(11) "Reimbursable wages" means the worker's gross wages for the Wage Subsidy period.

(12) "Skills building" means a class or course of instruction taken by the worker for the purpose of enhancing an existing skill or developing a new skill. When skills building is the transitional work, the worker must agree in writing to take the class or course of instruction.

(13) "Transitional Work" means temporary work with the employer-at-injury which is not the worker's full duty regular work and is assigned because the worker cannot perform full duty regular work. Transitional work must be within the worker's injury-caused limitations and may be created through modification of the worker's regular work, job restructuring, assistive devices, worksite modification(s), reduced hours, or reassignment to another job. Transitional work must be within the employer's course and scope of trade or profession, unless the work is "skills building."

(14) "Worker Leasing Company" means the person which provides workers, by contract and for a fee, as prescribed in ORS 656.850.

(15) "Work site" means a primary work area available for a worker to use to perform the required job duties. The work site may be the employer's, client's, or worker's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A work site may include a worker's personal property or vehicle if required to perform the job.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07
Amended 12-1-2009 as WCD Admin. Order 09-059, eff. 1-1-2010

436-105-0006 Administration of Rules

(1) Orders issued by the division to enforce ORS 656.622 or these rules are orders of the director.

(2) The department maintains the financial integrity of the fund and all reimbursement is subject to the availability of funds. If the funds are too low for all reimbursements, the director has the final authority to determine how the funds will be disbursed.

(3) The director may use monies from the fund for activities to provide information about and encourage the reemployment of injured workers. A maximum of $250,000 may be used in a fiscal year, July 1 to June 30. The director must approve all expenditures. Activities include, but are not limited to:

(a) Advertisements and promotion of reemployment assistance programs and associated production costs; and

(b) Public reemployment assistance program conferences and workshops.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

436-105-0008 Reconsideration/Appeal to the Director

(1) The division will deny any reimbursement for Employer-at-Injury Program assistance it finds in violation of these rules. The division has the discretion to deny any reimbursement of Employer-at-Injury Program assistance it determines is not reasonable, practical, or feasible, or considers an abuse of the program.

(2) Parties directly affected by a division Employer-at-Injury Program decision may request a reconsideration by sending a written request for reconsideration to the administrator no later than 60 days after the date the decision is issued. Facsimiles that are legible and complete are acceptable and will be processed the same as originals. Reconsideration must precede a director's review.

(3) The request for reconsideration must specify the reasons why the decision is appealed and may include additional documentation. No reconsideration will be granted unless the request meets the requirements of this rule.

(4) The division will reconsider the decision and notify all directly affected parties of its decision in writing. The affected parties may request a director's review by sending a written request no later than 60 days after the date the reconsideration was issued. The request must specify the reasons why the decision is appealed and may include additional documentation.

(5) The director may require any affected party to provide information or to participate in the director's review. If the party requesting the director's review fails to participate without reasonable cause as determined by the director, the director may dismiss the review.

(6) The director's review decision will be issued in writing and all directly affected parties will be notified. The director's review decision is final and not subject to further review by any court or other administrative body.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07

436-105-0500 Insurer Participation in the Employer-At-Injury Program

(1) An insurer must be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer will notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice must be issued:

(a) Upon acceptance or reopening of a claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance must contain the following language:

(a) The notice to the worker must appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].

(b) The notice to the employer-at-injury must appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer will administer the Employer-at-Injury Program according to these rules. The insurer must assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (5) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer wage subsidy requests as specified in OAR 436-105-0520(1);

(d) Make worksite modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the compensable injury or occupational disease or, if the claim has not been accepted or denied, the claimed workers' compensation injury or occupational disease. The date the medical release is issued by the worker's medical service provider is considered the effective date if an effective date is not otherwise specified.

(b) Two types of medical release qualify under these rules:

(A) A medical release that states the worker's specific current or projected restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work.

(c) A medical release must cover any period of time for which benefits are requested.

(6) For the purposes of the Employer-at-Injury Program, a medical release, and any restrictions it contains, remains in effect until another medical release is issued by the worker's medical service provider. An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(7) The insurer must maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program reimbursement request. The insurer will maintain the following information at the authorized claim processing location(s):

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the wage subsidy period as follows:

(A) Payroll records must state the payroll period, wage rate(s), and the worker's gross wages for the wage subsidy period. The payroll record must also include the dates and hours worked each day if the worker has hourly restrictions;

(B) Insurers and employers may supplement payroll records with documentation of how the worker's earnings were calculated for the wage subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll record(s) nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days; and

(D) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work must be provided for those days.

(d) A legible copy of proof of purchase, providing proof the item was ordered during the Employer-at-Injury Program period and proof of payment of the item(s) for worksite modification purchases and Employer-at-Injury Program purchases;

(e) Written documentation of the insurer's decision to approve worksite modifications;

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties;

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services/Oregon Health Authority, if applicable;

(h) The written acceptance by the worker when skills building is the transitional work; and

(i) Documentation, including course title and curriculum for a class or course of instruction when Employer-at Injury Program purchases are requested.

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)
Stats. Implemented: ORS 656.340, 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07
Amended 12-1-2009 as WCD Admin. Order 09-059, eff. 1-1-2010
Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012
Amended 1/29/15 as Admin. Order 15-054, eff. 3/1/15

436-105-0510 Employer Eligibility

(1) The employer must maintain Oregon workers' compensation insurance coverage.

(2) The employer must be the employer at injury as defined in OAR 436-105-0005.

(3) The employer must be employing an eligible worker.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 5/24/05 as WCD Admin. Order 05-057, eff. 7/1/05
Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07
Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012

436-105-0511 Worker Eligibility

(1) The worker must have an Oregon workers' compensation injury or occupational disease claim at the time of the Employer-at-Injury Program.

(2) The worker must not be covered by the Injured Inmate Law.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended and renumbered from OAR 436-105-0510 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07

436-105-0512 End of Eligibility

The Employer-at-Injury Program will end:

(1) When the worker or employer no longer meets the eligibility provisions stated in OAR 436-105-0510 and OAR 436-105-0511;

(2) When the worker's claim is closed or denied;

(3) When sanctions under OAR 436-105-0560 preclude eligibility;

(4) When the insurer ends the Employer-at-Injury Program at any time while the worker's claim is open; or

(5) Two years after the original date of acceptance of a non-disabling claim.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended and renumbered from OAR 436-105-0510 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07
Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012

436-105-0520 Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening for a nondisabling claim or a disabling claim. If a nondisabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-at-Injury Program may be used again. Assistance available includes:

(1) Wage subsidy, which provides 45 percent reimbursement of the worker's gross wages for the wage subsidy period. Wage subsidy benefits are subject to the following conditions:

(a) A wage subsidy may not exceed 66 workdays and must be completed within a 24 consecutive month period;

(b) A wage subsidy may not start or end with paid leave;

(c) If the worker has hourly restrictions, reimbursable paid leave must be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement;

(d) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

(2) Worksite modification.

(a) Worksite modification means altering a worksite by renting, purchasing, modifying, or supplementing equipment to:

(A) Enable a worker to perform the transitional work within the worker's limitations that resulted in the worker's EAIP eligibility;

(B) Prevent a worsening of the worker's compensable injury or occupational disease; or

(C) If the claim has not been accepted or denied, to prevent a worsening of the claimed workers' compensation injury or occupational disease.

(b) Worksite modification assistance is subject to the following conditions:

(A) The insurer determines the appropriate worksite modifications for the worker;

(B) The insurer documents its reasons for approving the modifications;

(C) The worksite modifications must be ordered during the Employer-at-Injury Program; and

(D) Worksite modification items become the employer's property upon the end of the Employer-at-Injury Program.

(3) Employer-at-Injury Program purchases, which are limited to:

(a) Tuition, books, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skills building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum expenditure is $1,000. Tuition, books, fees, and required materials will be provided under the following conditions:

(A) The insurer determines the instruction will help the worker enhance an existing skill or develop a new skill, and documents its decision; and

(B) The worker begins participation in the class or course while eligible for the Employer-at-Injury Program;

(b) Clothing required for the job, except clothing the employer normally provides. Clothing becomes the worker's property. Maximum expenditure is $400.

(4) Employer-at-Injury Program purchases of tools and equipment, including consumables, must be required for the worker to perform transitional work. These purchases will be the employer's property.

(5) Worksite modification and purchases of tools and equipment are limited to a combined maximum reimbursement of $5,000.

(6) All modifications and purchases made by the employer in good faith are reimbursable, even if the worker refuses to return to work, or if the worker agreed to take part in training and then later refused to attend training.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 4/12/13 as Admin. Order 13-054, eff. 7/1/13
Amended 1/29/15 as Admin. Order 15-054, eff. 3/1/15

436-105-0530 Employer-at-Injury Program Procedures for Concurrent Injuries

(1) A worker is eligible for only one Employer-At-Injury Program at a time.

(2) When a worker in an Employer-at-Injury Program incurs a new compensable injury, transitional work for the first Employer-At-Injury is considered regular work for the second Employer-at-Injury Program.

(3) If the new injury makes the first Employer-at-Injury Program unsuitable, the worker may be eligible for a second Employer-at-Injury Program under the new injury.

(4) When the worker is no longer eligible for the second Employer-At-Injury Program, the first Employer-At-Injury Program may be resumed if the employer and worker still meet eligibility criteria under that claim.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

436-105-0540 Employer-at-Injury Program Reimbursement Procedures

(1) Reimbursements may include wage subsidy, Employer-at-Injury Program purchases, and worksite modification.

(2) The insurer is entitled to a program administrative cost of $120.00 for the first reimbursement request of an Employer-at-Injury Program. A subsequent request for reimbursement for the same Employer-at-Injury Program is not entitled to an additional program administrative cost.

(3) The insurer must receive all required documentation for reimbursement within one year from the end of the Employer-at-Injury Program in order to qualify for reimbursement. The insurer must date stamp each reimbursement request document with the receipt date.

(4) The insurer must submit the request for reimbursement (Form 2360) to the division within one year and 30 days from the end of the Employer-at-Injury Program.

(5) The employer-at-injury reimbursement request must be a minimum of $100. The associated administrative costs will also be eligible for reimbursement.

(6) Subsequent requests less than $100 will be eligible for reimbursement. However, the requests will not be eligible for reimbursement of a subsequent administrative cost.

(7) If the original request was less than $100, but the amended request is at least $100, the request and the associated administrative costs will be eligible for reimbursement.

(8) When the division finds the insurer has submitted an Employer-at-Injury Program reimbursement request that is incomplete or contains an error, the division may return the form to the insurer for correction. The insurer has 60 days from the date the insurer receives the reimbursement request, or one year and 30 days from the end of Employer-at-Injury Program eligibility, whichever is greater, to make the corrections and return the corrected form to the division.

(9) The insurer may send an Employer-at-Injury Program reimbursement request to the division when a claim was initially denied and was subsequently accepted after the Employer-at-

Injury Program eligibility ended and more than one year and 30 days have passed. In that case, the insurer must send a completed Employer-at-Injury Program reimbursement request to the division within 60 days of the first order or stipulation and order accepting the claim. A copy of the order accepting the claim, or stipulation and order accepting the claim must be attached.

(10) The insurer may request reimbursement for a qualifying Employer-at-Injury Program that took place prior to claim denial even if the claim is denied at the time the reimbursement request is sent to the division.

(11) Amended reimbursement requests must be sent to the division within one year and 30 days from the end of the Employer-at-Injury Program eligibility except as provided in section (6) of this rule. The insurer may not request additional administrative cost reimbursement for filing an amended reimbursement request.

(12) An amended reimbursement request must clearly state that it is an amendment and cite the corrected information.

(13) The insurer will not use Employer-at-Injury Program costs subject to reimbursement for rate making, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that Employer-at-Injury Program costs do not affect the employer's rates or dividend.

(14) If a preferred worker employed by an eligible employer with active premium exemption incurs a new injury, the claim is subject to claim cost reimbursement under OAR 436-110. If the worker subsequently enters an Employer-at-Injury Program, program costs are to be separated from claim costs and will not be reimbursed as claim costs.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07
Amended 12-1-2009 as WCD Admin. Order 09-059, eff. 1-1-2010
Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012

436-105-0550 Audits

(1) Insurers and employers are subject to periodic program and fiscal audits by the division. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements must be repaid to the department.

(2) The audit may include but not be limited to a review of the records required in OAR 436-105-0500(7).

(3) When conflicting documentation exists, the division will utilize a preponderance of evidence standard to decide eligibility for reimbursement and if there is no clear preponderance, reimbursement will be allowed.

(4) The division reserves the right to visit the work site to determine compliance with these rules.

Stat. Auth.: ORS 656.455, 656.622, 656.726(4), 731.475
Stats. Implemented: ORS 656.455, 656.622, 731.475
Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07

Amended 12-1-2009 as WCD Admin. Order 09-059, eff. 1-1-2010

436-105-0560 Sanctions

(1) Any person who knowingly makes a false statement or misrepresentation to the director or an employee of the director for the purpose of obtaining any benefits or reimbursement from the Employer-at-Injury Program or who knowingly misrepresents the amount of a payroll, or knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an insurer, self-insured employer, employer or their representative include, but are not limited to:

(a) Misrepresenting information in order to receive Employer-at-Injury Program assistance;

(b) Making a serious error or omission which resulted in the division approving reimbursement in error;

(c) Failing to respond to employer requests for assistance or failing to administer Employer-at-Injury Program assistance; or

(d) Failure to comply with any condition of these rules.

(3) Sanctions by the director may include one or more of the following:

(a) Ordering the person to take corrective action within a specific period of time;

(b) Ordering the person being sanctioned to repay the department all, or part, of the monies reimbursed, with or without interest at a rate set by the department. The order may include the department's legal costs;

(c) Ending the employer's eligibility to use the Employer-at-Injury Program for a specific period of time; and

(d) Pursuing civil penalties under ORS 656.745 or criminal action against the party.

Stat. Auth.: ORS 656.622, 656.726(4)
Stat. Implemented: ORS 656.622, 656.745, 656.990
Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

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

In the Matter of the Amendment of **ORDERS OF**
Oregon Administrative Rules (OAR) chapter 436, **ADOPTION**

Division 009, Oregon Medical Fee and Payment Rules ..... No. 15-050
Division 010, Medical Services ..... No. 15-051
Division 030, Claim Closure and Reconsideration ..... No. 15-052
Division 035, Disability Rating Standards ..... No. 15-053
Division 105, Employer-at-Injury Program ..... No. 15-054
Division 110 Preferred Worker Program ..... No. 15-055
Division 120, Vocational Assistance to Injured Workers ..... No. 15-056

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.
On Nov. 12, 2014, 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 persons 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 December, 2014, *Oregon Bulletin*. On Dec. 19, 2014, a public hearing was held as announced. The record remained open for written testimony through Dec. 29, 2014.

SUMMARY OF RULE AMENDMENTS

- The Workers' Compensation Division has amended OAR 436-030, Claim Closure and Reconsideration, and OAR 436-035, Disability Rating Standards, to reflect the decision of the Oregon Supreme Court in *Schleiss v. SAIF* (364 Or. 637 (2013)). A contributing cause to impairment must be a statutorily recognized preexisting condition to qualify for apportionment. In injury claims, to be recognized as a preexisting condition, a condition must be (1) arthritis or an arthritic condition, or (2) diagnosed or treated prior to the compensable injury. In an occupational disease claim, to be recognized as a preexisting condition, a condition must precede the onset of the claimed occupational disease. Revised rules limit apportionment to those losses that existed before the compensable injury and that qualify as preexisting conditions.
- The division has amended OAR 436-009, Oregon Medical Fee and Payment Rules, 436-010, Medical Services, 436-030, Claim Closure and Reconsideration, 436-035, Disability Rating Standards, 436-105, Employer-at-Injury Program, 436-110 Preferred Worker Program, and 436-120, Vocational Assistance to Injured Workers, to reflect the decision of the Oregon Court of Appeals in *Brown v. SAIF* (262 Or. App. 640 (2014)). The court found that the legislative history established that an insurer's obligation to specify the accepted conditions for a claim was not intended to have a negative impact on the injured worker's right to benefits resulting from the compensable injury; specifically, the

legislature did not mean to equate "compensable injury" with an "accepted condition." Revised rules distinguish definitions and actions that are relevant to compensable injuries from those definitions and actions that are relevant to accepted conditions.

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 are adopted on this 29th day of January, 2015, **to be effective March 1, 2015.**

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 ten days after filing with the Secretary of State.

DATED this 29th day of January, 2015.

/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: Workers' Compensation Division e-mail distribution lists, including advisory committee members and testifiers

Secretary of State
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

FILED
1-29-15 4:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing. by the

Department of Consumer and Business Services, Workers' Compensation Division	436
Agency and Division	Administrative Rules Chapter Number
Fred Bruyns	(503) 947-7717
Rules Coordinator	Telephone
PO Box 14480, Salem, OR 97309-0405	
Address	

To become effective 03/01/2015 Rulemaking Notice was published in the December 2014 Oregon Bulletin.

RULE CAPTION

Recognition of preexisting conditions; effects of compensable injury versus accepted conditions

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

436-035-0006

AMEND:

436-009-0005, 436-010-0005, 436-010-0280, 436-030-0005, 436-030-0020, 436-030-0034, 436-030-0035, 436-030-0065, 436-030-0135, 436-030-0165, 436-035-0005, 436-035-0007, 436-035-0008, 436-035-0012, 436-035-0013, 436-035-0014, 436-035-0016, 436-035-0018, 436-035-0250, 436-105-0500, 436-105-0520, 436-110-0350, 436-120-0005

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS chapter 656, primarily 656.726(4)

Other Authority:

Statutes Implemented:

ORS ch. 656, primarily 656.005, 656.214, 656.262, 656.266, 656.268, 656.273, 656.340, 656.622, 656.802

RULE SUMMARY

The agency has amended OAR 436-030, Claim Closure and Reconsideration, and OAR 436-035, Disability Rating Standards, to reflect the decision of the Oregon Supreme Court in Schleiss v. SAIF (364 Or. 637 (2013)). A contributing cause to impairment must be a statutorily recognized preexisting condition to qualify for apportionment. In injury claims, to be recognized as a preexisting condition, a condition must be (1) arthritis or an arthritic condition, or (2) diagnosed or treated prior to the compensable injury. In an occupational disease claim, to be recognized as a preexisting condition, a condition must precede the onset of the claimed occupational disease. Revised rules limit apportionment to those losses that existed before the compensable injury and that qualify as preexisting conditions.

The agency has amended OAR 436-009, Oregon Medical Fee and Payment Rules, 436-010, Medical Services, 436-030, Claim Closure and Reconsideration, 436-035, Disability Rating Standards, 436-105, Employer-at-Injury Program, 436-110 Preferred Worker Program, and 436-120, Vocational Assistance to Injured Workers, to reflect the decision of the Oregon Court of Appeals in Brown v. SAIF (262 Or. App. 640 (2014)). The court found that the legislative history established that an insurer's obligation to specify the accepted conditions for a claim was not intended to have a negative impact on the injured worker's right to benefits resulting from the compensable injury; specifically, the legislature did not mean to equate "compensable injury" with an "accepted condition." Revised rules distinguish definitions and actions that are relevant to compensable injuries from those definitions and actions that are relevant to accepted conditions.

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Rules Coordinator Name	Email Address