

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Preferred Worker Program
Oregon Administrative Rules
Chapter 436, Division 110**

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. 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 website:

http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
PREFERRED WORKER PROGRAM**

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110**

436-110-0001 Authority for Rules

The director has adopted OAR Chapter 436, Division 110 under authority of ORS 656.622 and 656.726.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0002 Purpose of Rules

(1) These rules explain what assistance and reimbursements are available from the Preferred Worker Program, who is qualified, and how to receive assistance and reimbursements.

(2) The Preferred Worker Program encourages the reemployment of workers whose on-the-job injuries result in disability which may be a substantial obstacle to employment by providing assistance from the Workers' Benefit Fund to eligible injured workers and to the employers who employ them.

(3) The Preferred Worker Program is a worker and employer-at-injury-activated program.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0003 Applicability of Rules

(1) These rules apply to all requests for Preferred Worker Program reemployment assistance received by the division on or after the effective date of these rules.

(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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07
Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012

436-110-0005 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) "Date of eligibility" means the date the division determines a worker is a preferred worker.

(4) "Date of hire" means the date the worker starts work as a preferred worker.

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

(6) "Disability" means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers' compensation claim that limits the worker from performing one or more of the worker's regular job duties.

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

(8) "Division approval" means a preferred worker agreement signed by an authorized division representative.

(9) "Employer at injury" means the organization in whose employ the worker sustained the injury or occupational disease.

(10) "Exceptional disability" means a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury that results in impairment equal to or greater than a Class III as defined in OAR 436-035. The division will determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries resulting in permanent disability.

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

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

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

(14) "Regular employment" means the job the worker held at the time of the injury, claim for aggravation, or own motion opening.

(15) "Reimbursable wages" means the worker's gross wages for the wage subsidy period.

(16) "Worksite" means a primary work area that is in Oregon, already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's, worker's, or worker leasing company's client's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. If the "worksite" is mobile, it must be available in Oregon for inspection and modification.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010

Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10

Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012

436-110-0006 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

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has final authority to determine how the funds will be disbursed.

(3) The director may use moneys from the fund for activities to provide information about and encourage 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: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0007 Reconsideration/Appeal to the Director

(1) The division will deny any request for Preferred Worker Program assistance it finds in violation of these rules. The division has the discretion to deny a request it determines is not reasonable, practical, or feasible, or considers an abuse of the program.

(2) Parties directly affected by a division reemployment assistance 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. No reconsideration will be granted unless the request meets the requirements of this subsection.

(4) The division will reconsider the decision prior to a director's review and will notify all affected parties of its decision upon reconsideration.

(5) If, upon reconsideration, the division upholds the original decision, the director's review will begin.

(6) 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.

(7) The director's review decision will be issued in writing. 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 07-066, eff. 12/1/07

436-110-0150 Pilot Projects

(1) The director may develop one or more pilot projects to test alternatives to the current system of reemploying preferred workers.

(2) Notwithstanding any other provision of these rules, the director and others participating in pilot projects are bound by the terms of the pilot project.

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Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622
Hist: Adopted 6/5/13 as WCD Admin. Order 13-055, eff. 6/7/13

436-110-0240 Insurer Participation in the Preferred Worker Program

(1) The insurer of the employer at injury must be an active participant in providing reemployment assistance. Participation includes issuing notices of the assistance available from the preferred worker program.

(2) The insurer must notify the worker and employer at injury in writing of the reemployment assistance available from the fund. A notice must be issued:

(a) Within 5 days of a worker's release for work after the worker has been declared medically stationary by the attending physician;

(b) Upon determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and

(c) Upon approval of a claim disposition agreement.

(3) Pursuant to section (2) of this rule, the notice to the worker must appear in bold type and contain the following language:

The preferred worker program helps Oregon's injured workers get back to work. To find out whether you qualify, contact the preferred worker program at one of the telephone numbers, fax numbers, mailing addresses, or e-mail address listed below.

For the Salem office call: 503-947-7588, 1-800-445-3948, or FAX 503-947-7581.

For the Medford office call: 541-776-6032, 1-800-696-7161, or FAX 541-776-6022.

Or write the preferred worker program at: 350 Winter St NE, P.O. Box 14480, Salem, Oregon 97309-0405. Or write to the preferred worker program at:

pwp.oregon@state.or.us

(4) Under section (2) of this rule, the notice to the employer must appear in bold type and contain the following language:

As the employer of an injured worker, you may be eligible for valuable preferred worker program incentives if the worker cannot return to regular work and has permanent limitations caused by the injury.

If the worker's preferred worker program eligibility has not been determined, you may contact the Workers' Compensation Division for an eligibility review.

To be eligible for exemption from paying workers' compensation premiums for this worker for three years, you must:

- **Bring back your preferred worker to a new or modified job; and**
- **Notify us within 90 days of the date the worker is determined eligible or within 90 days of the date you bring the worker back to work, whichever is later.**

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To request all other preferred worker program benefits, you must contact the Workers' Compensation Division within 180 days of the worker's claim closure date.

To find out more about the preferred worker program, contact the program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: 503-947-7588, 1-800-445-3948, or FAX 503-947-7581.

For the Medford office call: 541-776-6032, 1-800-696-7161, or FAX 541-776-6022.

Or write the preferred worker program at: 350 Winter St NE, P.O. Box 14480, Salem, Oregon 97309-0405.

Or write to the preferred worker program at: pwp.oregon@state.or.us

(5) The insurer must provide the division with preferred worker information in the form and format the director prescribes in OAR 436-030, upon the following:

(a) Claim closure according to ORS 656.268;

(b) Within 30 calendar days from the insurer's receipt of the earliest opinion and order of an administrative law judge, order on reconsideration, order on review by the board, decision of the Court of Appeals, or stipulation that grants initial permanent disability after the latest opening of the worker's claim; and

(c) Approval of a claim disposition agreement according to ORS 656.236 and documented medical evidence indicates permanent disability exists as a result of the injury or disease, and the worker is unable to return to regular employment.

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)
Stats. Implemented: ORS 656.340(1), (2), (3); 656.622; 656.726(4)
Hist: Amended 4/15/10 as WCD Admin. Order 10-050, eff. 4/15/10 (temp)
Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10
Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012

436-110-0290 Employer at Injury Use of the Preferred Worker Program

The conditions for the employer at injury to activate the preferred worker program include:

(1) To be eligible for premium exemption the employer at injury must:

(a) Bring back its preferred worker to a new or modified job;

(b) Contact the Workers' Compensation Division for a preferred worker eligibility review if the worker's eligibility has not been determined; and

(c) Notify its insurer within 90 days from the date of eligibility or the date of hire, whichever is later.

(2) For all other preferred worker program benefits the employer at injury must request preferred worker program assistance from the division within 180 days of the worker's claim closure date, with the following exception: When worksite modification are provided, and the modifications are completed and verified by the division more than 150 days after the worker's

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claim closure date, the employer at injury will have 30 calendar days from the verification date to request other assistance.

(3) In calculating the 180 day period under this rule, the claim closure date will not be included, and if the 180th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 180 day period.

(4) The worker must agree to accept the new or modified regular job in writing. The job offer must include:

- (a) The start date. If the job starts after the modifications are in place, so note;
- (b) Wage and hours;
- (c) Job site location; and
- (d) Description of job duties.

(5) If the employer at injury uses worksite modification assistance and the employer or worker later requests additional modifications for the same job, the employer's worksite modification benefit will be exhausted before using the worker's worksite modification benefits.

(6) All other provisions under OAR 436-110 apply unless otherwise indicated.

Stat. Auth.: ORS 656.726(4), 656.622

Stats. Implemented: ORS 656.622

Hist.: Amended 4/15/10 as WCD Admin. Order 10-050, eff. 4/15/10 (temp)

Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10

436-110-0310 Eligibility and End of Eligibility for the Preferred Worker Program

(1) The eligibility requirements for an employer, except as provided in OAR 436-110-0345(1) for Employment Purchases, are:

- (a) The employer has and maintains Oregon workers' compensation insurance coverage;
- (b) The employer complies with the Oregon Workers' Compensation Law;
- (c) The employer must offer or provide employment to an eligible Preferred Worker who is a subject Oregon worker according to ORS 656.027;
- (d) If the employer is a worker leasing company, it must be licensed with the division; and
- (e) The employer is not currently ineligible for Preferred Worker benefits under OAR 436-110-0900.

(2) The eligibility requirements for a worker are:

(a) The worker has an accepted disabling Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) Medical evidence indicates that, because of injury-caused limitations, the worker will not be able to return to regular employment as defined in OAR 436-110-0005 under the most recent disabling claim or claim opening. If the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular

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employment;

(c) Medical documentation indicates permanent disability exists as a result of the injury or disease, whether or not an order has been issued awarding permanent disability; and

(d) The worker is authorized to work in the United States.

(3) A worker may not use Preferred Worker benefits for self-employment unless the injury that gave rise to the worker's eligibility for the Preferred Worker Program occurred in the course and scope of self-employment. In that case, the worker may use the benefits to return to the same self-employment or for employment other than self-employment.

(4) Reasons for ending Preferred Worker Program eligibility include, but are not limited to, the following:

(a) Misrepresentation or omission of information by a worker or employer to obtain assistance;

(b) Failure of a worker or employer to provide requested information or cooperate;

(c) Falsification or alteration of a Preferred Worker card or a *Preferred Worker Program Agreement*;

(d) Conviction of fraud in obtaining workers' compensation benefits;

(e) The worker no longer meets the eligibility requirements under section (2) of this rule;

(f) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900;

(g) The employer does not maintain Oregon workers' compensation insurance coverage, except as provided in OAR 436-110-0345(1) for Employment Purchases;

(5) The division retains the right to reinstate Preferred Worker Program eligibility if eligibility was ended prematurely or in error, or the employer has reinstated or obtained workers' compensation insurance coverage.

(6) A worker found ineligible because he/she was not authorized to work in the United States may request a redetermination of eligibility after providing the division with documentation that he/she is authorized to work in the United States.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010

436-110-0320 Preferred Worker Identification Card

(1) The division issues a Preferred Worker Identification card to eligible workers. The card identifies the worker as being eligible to offer an employer Preferred Worker Program assistance. If a Preferred Worker loses the card, the division will issue a replacement card.

(2) The division issues this card as follows:

(a) Automatically at the time of claim closure based upon insurer submission of Preferred Worker information as specified in OAR 436-110-0240(5);

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- (b) When the worker or their representative request a card, and the worker is eligible; or
- (c) Any other time the division finds a worker eligible.
- (3) The division may inactivate a Preferred Worker card if:
 - (a) The Preferred Worker card was issued in error; or
 - (b) Any reason for ending Preferred Worker Program eligibility as specified in OAR 436-110-0310(4) applies.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended 6/12/08 as WCD Admin. Order 08-058, eff. 7/1/08

436-110-0325 Premium Exemption General Provisions

- (1) The purpose of premium exemption is to provide an incentive to employers to hire preferred workers.
- (2) Premium exemption releases an employer from paying workers' compensation insurance premiums and premium assessments on a preferred worker for three years from the date premium exemption started. While using premium exemption, the employer does not report, and the insurer cannot use, the preferred worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer must report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-070. The employer must start paying insurance premiums and premium assessments when premium exemption ends.
- (3) Premium exemption cannot be used for regular employment unless the job is modified to accommodate the worker's injury-caused limitations.
- (4) To qualify for premium exemption the employer at injury or aggravation must bring back its preferred worker to a new or modified job and notify its insurer within 90 days from the date of eligibility or the date of hire, whichever is later. Premium exemption starts on the date of hire or the date of eligibility, whichever is later.
- (5) If a worker's preferred worker eligibility has not been determined as of the date of hire, the worker or the employer at injury or aggravation may request a preferred worker eligibility review. If the worker is eligible, the Workers' Compensation Division will issue a Preferred Worker Identification Card to the worker. The employer must notify its insurer of the worker's preferred worker status within 90 days of the eligibility date on the preferred worker identification card. Premium exemption starts on the date of hire or the date of eligibility, whichever is later.
- (6) If the employer is not the employer-at-injury or aggravation, the worker discloses preferred worker status to that employer, and the employer notifies the insurer within 90 days from the date of hire that they have hired a preferred worker, premium exemption starts on the date of hire.
- (7) If a worker covered under premium exemption incurs a compensable injury or occupational disease during the premium exemption period, the employer must notify its insurer

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of the injury and the worker's preferred worker status. The claim costs for the injury are reimbursed under OAR 436-110-0330.

(8) If a business changes its name, is sold, merged, or otherwise changes its ownership during a premium exemption period, the premium exemption period is three years from the date the exemption was initiated by the original business. There will not be an additional three-year premium exemption period allowed due to the change(s) in the business.

(9) If an employer changes the job duties of a preferred worker during the premium exemption period, there is no change in the three year premium exemption period. There will not be an additional three-year premium exemption period allowed due to changes in the preferred worker's job duties with the same employer.

Stat. Auth.: ORS 656.726(4), 656.622
Stats. Implemented: ORS 656.622
Hist.: Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010
Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10
Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012

436-110-0330 Claim Cost Reimbursement

(1) Claim Cost Reimbursement provides reimbursement to the insurer for claim costs when a Preferred Worker files a claim for injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursable claim costs include disability benefits, medical benefits, vocational costs in accordance with OAR 436-120-0720, Claim Disposition Agreements in accordance with ORS 656.236, Disputed Claim Settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries, and administrative costs;

(c) Reimbursable claim costs for denied claims include costs incurred up to the date of denial, but are limited to benefits the insurer is obligated to pay under ORS 656 and diagnostic tests, including independent medical examinations necessary to determine compensability of the claim;

(d) The administrative cost factor to be applied to claim costs will be as published in *Bulletin 316*; and

(e) The claim must not be used for ratemaking, 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 claim data will not affect the employer's rates or dividend.

(2) The insurer must request Claim Cost Reimbursement as follows:

(a) Requests for reimbursement must be made within one year of the end of the quarter within which payment was made;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin; and

(c) Reimbursement documentation must include, but is not limited to:

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(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program, or the fund;

(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(3) Requests for reimbursement must not include:

(a) Claim costs for any injury that did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim;

(c) Costs incurred due to inaccurate, untimely, unreasonable, or improper processing of the claim;

(d) Penalties, fines or filing fees;

(e) Disposition amounts in accordance with ORS 656.236 (CDA) and 656.289 (DCS) not previously approved by the division;

(f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program, or the fund; or

(g) Reimbursable Employer-at-Injury Program costs.

(4) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts must be refunded to the division and, as applicable, future reimbursements will be denied if, upon audit, any of the following is found to apply:

(a) Reimbursement has been made for any of the items specified in section (3) of this rule;

(b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented;

(c) The separate payments of compensation have not been documented;

(d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;

(e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating, or dividend calculations at the time of audit or within 14 working days thereafter.

(5) If the conditions described in subsections (4)(a) through (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for

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reimbursement:

(a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition must be submitted to the division prior to submitting the disposition to the Workers' Compensation Board or administrative law judge for approval;

(b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and

(c) A request for approval of the proposed disposition must include:

(A) The original proposed disposition, containing appropriate signatures and appropriate signature lines for division and Workers' Compensation Board or administrative law judge approval, that specifies the proposed assistance from the fund;

(B) A written explanation of how the calculations for the amount of assistance from the fund were made; and

(C) Other information as required by the division.

Stat. Auth.: ORS 656.726(4), 656.622

Stats. Implemented: ORS 656.622

Hist.: Amended 6/12/08 as WCD Admin. Order 08-058, eff. 7/1/08

Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010

436-110-0335 Wage Subsidy General Provisions

Wage subsidy provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage subsidy benefits are subject to the following conditions:

(1) The effective date of a *Wage Subsidy Agreement* is mutually agreed to by the division, employer, and worker if applicable;

(2) A wage subsidy is limited to a duration of 183 calendar days and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability as defined in OAR 436-110-0005. For a worker with an exceptional disability, the wage subsidy duration is limited to 365 calendar days and a monthly reimbursement rate of 75 percent;

(3) A *Wage Subsidy Agreement* may be interrupted once for reasonable cause and extended to complete the *Wage Subsidy Agreement* on a whole workday basis. Reasonable cause includes, but is not limited to, personal or family illness, death in the worker's family, pregnancy of the worker or worker's spouse, a compensable injury to the worker, participation in an employer-at-injury program, or layoff. A layoff must be a minimum of 10 consecutive work days. A period of time during which the employer is without workers' compensation insurance coverage is not "reasonable cause," and no extension will be granted;

(4) A preferred worker's pay structure must be the same as the pay structure for other workers employed in similar jobs by the employer;

(5) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

(a) First, examine the wages paid by the employer for other workers doing the same job;

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(b) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted; and

(c) If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement;

(6) Preferred worker program wage subsidies may not be combined with a wage subsidy for a training plan under OAR 436-120;

(7) A worker-activated and employer at injury-activated wage subsidy can not be used for the same job with the employer at injury;

(8) If the worker's employer changes during the *Wage Subsidy Agreement* period due to a sale of the business, incorporation, or merger, the agreement can be transferred to the new employer by an addendum to the agreement approved by the division as long as the worker's job remains the same and the new employer is eligible under OAR 436-110-0310(1);

(9) A completed and signed *Wage Subsidy Reimbursement Request* form must be submitted to the division with a copy of the worker's payroll records. The payroll record must state the dates (daily or weekly), hours, wage rate, and the worker's gross wage. Payroll records must be a legible copy and compiled in accordance with generally accepted accounting procedures; and

(10) All requests for reimbursement must be made within one year of the *Wage Subsidy Agreement* end date.

(11) Wage subsidy cannot be used for "regular employment" as defined in OAR 436-110-0005 unless the job has been modified to overcome the worker's injury-caused permanent restrictions.

Stat. Auth.: ORS 656.726(4), 656.622
Stats. Implemented: ORS 656.622
Hist: Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010
Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10

436-110-0336 Wage Subsidy – Employer at Injury Activated

Wage subsidy may be activated by the employer at injury as follows:

(1) The job must be within the worker's injury-caused restrictions. If a worksite modification is necessary to meet this requirement, wage subsidy will be deferred until:

(a) The worksite modification is complete, or

(b) The employer accommodates the worker's injury-caused restrictions while waiting for the worksite modification to be complete.

(2) The employer must complete and sign a wage subsidy agreement, and send it to the division in the timeframes allowed in OAR 436-110-0290.

(3) The completed and signed job offer must accompany the request as required in OAR 436-110-0290(4), unless it was already submitted with another request.

(4) The employer at injury may use wage subsidy once during an eligibility period.

Stat. Auth.: ORS 656.726(4), 656.622

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Stats. Implemented: ORS 656.622
Hist: Amended 4/15/10 as WCD Admin. Order 10-050, eff. 4/15/10 (temp)
Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10
Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012

436-110-0337 Wage Subsidy – Worker Activated

A Wage Subsidy may be requested by a worker as follows:

- (1) The worker and employer must complete and sign a *Wage Subsidy Agreement* and submit the agreement to the division within three years of the date of hire.
- (2) A Preferred Worker may use Wage Subsidy twice, once each for two different jobs. The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.
- (3) If the employer at injury uses Wage Subsidy for a job, the worker cannot use Wage Subsidy for the same job.

Stat. Auth.: ORS 656.726(4), 656.622
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07
Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010

436-110-0345 Employment Purchases – General Provisions

(1) An employment purchase is assistance necessary for a worker to find, accept, or retain employment in Oregon. These purchases may be provided for a job with a non-subject employer in Oregon, as long as that employer complies with the appropriate workers' compensation law. Employment purchases cannot be used for "regular employment" as defined in OAR 436-110-0005 unless the job has been modified to overcome the worker's injury-caused permanent restrictions. Except as provided in subsection (2)(h) of this rule, all purchases become the worker's property.

(2) Employment purchases are limited to:

- (a) Tuition, books, and fees for instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job. Maximum expenditure per use is \$1,000;
- (b) Temporary lodging, meals, and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation, and use of a personal vehicle will be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Lodging, meals, and mileage are limited to a combined period of one month, and the total maximum expenditure per use is \$500;
- (c) Tools and equipment mandatory for employment. Purchases must not include items the worker possesses, duplicate Worksite Modification items, vehicles, or items needed for worksite creation. Maximum expenditure per use is \$2,500;
- (d) Clothing required for the job. Maximum expenditure per use is \$400;
- (e) Moving expenses for a job if the new worksite is in Oregon and more than 50 miles from the worker's primary residence. When the worker's permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided

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to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. Moving expenses are limited to one use. Expenditure is limited to:

(A) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker. The cost of meals, lodging, public transportation, and use of a personal vehicle will be paid at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Lodging and meals are limited to a maximum period of two weeks. Mileage for one personal vehicle is limited to a single one-way trip; and

(B) Rental allowance for the worker's primary residence limited to first month's rent as specified in the rental agreement, non-refundable deposit in an amount not to exceed the first month's rent, and a required credit check for that residence;

(f) Initiation fees, or back dues and one month's current dues, required by a labor union;

(g) Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum expenditure is \$500;

(h) Worksite creation costs that are limited to equipment, furnishings or other things the employer needs to create a new job for the worker. All items purchased are the property of the employer. Maximum expenditure per use is \$5,000;

(i) Placement assistance requested by a preferred worker and provided by a certified vocational counselor or any public or private agency that provides placement services, that resulted in employment that the preferred worker retained for at least 90 days. This category can be used as often as necessary up to a maximum expenditure of \$2000. Placement assistance may not be combined with vocational assistance under OAR 436-120; and

(j) Miscellaneous purchases that do not fit into subsections (a) through (i) of this section, subject to approval by the director. This category does not include a vehicle purchase. This category can be used as often as necessary up to a maximum of \$2,500.

(3) The person or entity that purchased the item(s) may request reimbursement by submitting to the division a legible copy of an invoice or receipt showing payment has been made for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid.

(4) Costs of employment purchases will be paid by reimbursement, by an *Authorization for Payment*, or by other instrument of payment approved by the director.

(5) The division will not purchase directly or otherwise assume responsibility for employment purchases.

(6) Reimbursed costs will not be charged by the insurer to the employer as claim costs or by any other means.

(7) All requests for reimbursement must be made within one year of the *Employment Purchase Agreement* end date.

Stat. Auth.: ORS 656.726(4), 656.622
Stats. Implemented: ORS 656.622

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Hist.: Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010
Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10

436-110-0346 Employment Purchases – Employer at Injury Activated

Conditions for use of Employment Purchases by the employer at injury are as follows:

- (1) The employer must submit a completed *Employment Purchase Agreement* listing item(s) that are required of the worker to perform the job for which the worker is employed.
- (2) The employer at injury may use each Employment Purchase category once.

Stat. Auth.: ORS 656.726(4), 656.622
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

436-110-0347 Employment Purchases – Worker Activated

Conditions for use of employment purchases by a worker are as follows:

- (1) Except for moving expenses, placement assistance, and miscellaneous purchases needed to find a job, the worker and employer must submit a completed employment purchase agreement listing item(s) that are required of the worker to obtain or perform the job.
- (2) If employment purchases are to be used with a non-subject employer in Oregon, Premium Exemption is not activated.
- (3) Except as otherwise provided in these rules, a preferred worker may use each employment purchase category twice, once each for two different jobs. The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.
- (4) A preferred worker may request employment purchases as follows:
 - (a) The worker must contact the division directly for assistance in receiving employment purchases. The worker may make the request prior to employment, but not more than three years after the date of hire.
 - (b) The employment purchase agreement form must be completed and signed by the worker and employer and submitted to the division. If the request is for moving expenses, placement assistance, or the miscellaneous category, only the worker's signature is required.

Stat. Auth.: ORS 656.726(4), 656.622
Stats. Implemented: ORS 656.622
Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07
Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010
Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012

436-110-0350 Worksite Modification – General Provisions

- (1) Worksite modification means altering a worksite in Oregon, or available for inspection and modification in Oregon, by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases. Worksite modification may also include the means to protect modifications purchased by the preferred worker program in an amount not to exceed \$2,500.

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(2) Conditions for the use of worksite modification assistance are as follows:

- (a) Modifications will be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations. In order to determine appropriate worksite modifications, the reemployment assistance consultants have discretion to use reports by a medical service provider specific to the worker, specific documented "best practices" described by a medical service provider or authority, and their own professional judgment and experience;
- (b) A job analysis that includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed;
- (c) Modifications are limited to a maximum of \$25,000 for one job. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005;
- (d) Modifications not to exceed \$1,000 may be provided that would reasonably be expected to prevent further injury or exacerbation of the compensable injury or occupational disease, including any disability resulting from the compensable injury or occupational disease. A reemployment assistance consultant will determine the appropriateness of this type of modification based upon his or her professional judgment and experience, reports by a medical service provider specific to the worker, or specific documented "best practices" described by a medical service provider or authority. Costs of the modification(s) are included in the calculation of the total worksite modification costs;
- (e) Modifications are limited to \$2,500 for on-the-job training under OAR 436-120 or other similar on-the-job training programs when the trainer is not the employer at injury. A modification will not be approved for any other type of training;
- (f) Modifications limited to \$2,500 may be provided to protect the items approved in the *Worksite Modification Agreement* from theft, or damage from the weather. Insurance policy premiums will not be paid;
- (g) When a vehicle is being modified, the vehicle owner must provide proof of ownership and insurance coverage. The worker must have a valid driver license;
- (h) Rented or leased vehicles and other equipment will not be modified;
- (i) Modifications must be reasonable, practical, and feasible, as determined by the division;
- (j) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer;
- (k) A modification may include rental of tools, equipment, fixtures, or furnishings to

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determine the feasibility of a modification. It may also include consultative services necessary to determine the feasibility of a modification, or to recommend or design a worksite modification;

(l) Rental of worksite modification items and consultative services require division approval and are limited to a cost of up to \$3,500 each. The cost for rental of worksite modification items and consultative services does not apply toward the total cost of a worksite modification;

(m) Modification equipment will become the property of the employer, worker, or worker leasing company's client on the "end date" of a *Worksite Modification Agreement* or when the worker's employment ends, whichever occurs first. The division will determine ownership of worksite modification equipment prior to approving an agreement and has the final authority to assign property;

(n) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation, and use of a personal vehicle necessary for a worker to participate in one or more of these required activities will be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. The cost of the services described in this subsection does not apply toward the total cost of a worksite modification;

(o) If the property provided for the modification is damaged, in need of repair, or lost, the division will not repair or replace the property;

(p) The employer must not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property, may result in sanctions under OAR 436-110-0900; and

(q) The worker must not dispose of the property provided for the modification while employed in work for which the modification is necessary or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) A worker, employer or their representative may request worksite modification assistance.

(4) The person or entity that purchased the item(s) may request reimbursement by submitting to the division proof of payment for the items purchased. Reimbursement will be made for only those items and costs approved and paid.

(5) Costs of approved worksite modifications are paid by reimbursement, an *Authorization for Payment*, or by other instrument of payment approved by the director.

(6) The division will not purchase directly or otherwise assume responsibility for worksite modifications.

(7) Reimbursed costs will not be charged by the insurer to the employer as claims costs or by any other means.

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(8) A division worksite modification consultant will determine if competitive quotes are required.

(9) All requests for reimbursement must be made within one year of the *Worksite Modification Agreement* end date.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10
 Amended 1/29/15 as Admin. Order 15-055, eff. 3/1/15

436-110-0351 Worksite Modification – Employer at Injury Activated

Conditions for use of Worksite Modifications by the employer at injury are as follows:

(1) The employer at injury may use worksite modification assistance once for a job provided for their injured worker, or a second time if the worker changes to another job with the employer at injury within the timeframes allowed in OAR 436-110-0290(2).

(2) Modifications are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005.

(3) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* prior to any reimbursement or *Authorization for Payment*.

(4) Modifications may be provided for requests received within 180 days from the worker's claim closure date. Additional modifications may be provided under an approved agreement by addendum for requests received within three years from the date the worker started work for the employer in employment for which the worksite modification request was made.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Amended 4/15/10 as WCD Admin. Order 10-050, eff. 4/15/10 (temp)
 Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10

436-110-0352 Worksite Modification – Worker Activated

Conditions for use of worksite modification assistance by the worker are as follows:

(1) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* form, prior to any reimbursement or *Authorization for Payment*.

(2) Modifications may be provided for requests received within three years from the date of hire.

(3) A worker may use worksite modification assistance once with one employer and once with a second employer, or twice with the same employer if there is a job change. The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.

(4) Modifications after June 30, 1990, are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided for a worker with an exceptional disability as defined in OAR 436-110-0005. This maximum is not reduced by the use of worksite modifications by the employer at injury.

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Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07
 Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10

436-110-0850 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 may be recovered by the division directly or from future reimbursements by way of offset. If the division finds upon audit that procedures which led to disallowed reimbursements are still being used, the division may withhold further reimbursements until corrections satisfactory to the division are made.

(2) An insurer or employer must maintain claim records, notices, worker payroll records, reports, receipts, and documentation of payment supporting reemployment assistance costs for which reimbursement has been requested or expenditure by *Authorization for Payment* has been made. These records must be maintained for a period of three years after the last reimbursement request or expenditure by *Authorization for Payment*.

(3) The division reserves the right to visit the worksite to determine compliance with the agreement under which reemployment assistance has been provided.

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 07-066, eff. 12/1/07

436-110-0900 Sanctions

(1) Any person who knowingly makes any false statement or representation to the director or an employee of the director for the purpose of obtaining any benefit or payment from the Preferred Worker Program, or who knowingly misrepresents the amount of a payroll, or who knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an individual certified under OAR 436-120, a vocational assistance provider authorized under OAR 436-120, an agency of the State of Oregon, an insurer, an employer, or a Preferred Worker include, but are not limited to, the following:

(a) Misrepresenting information in order to obtain reemployment assistance. Two examples of misrepresentation are:

(A) Changing a job description or job title in order to obtain benefits where there are not corresponding job duty changes; and

(B) Obtaining a worker's signature on incomplete, incorrect, or blank agreements or reimbursement requests;

(b) Making a serious error or omission that resulted in the division approving a *Preferred Worker Program Agreement*, issuing a Preferred Worker card, or reimbursing claim costs in error;

(c) Failing to abide by the terms and conditions of a *Preferred Worker Program Agreement*;

(d) Failing to abide by the provisions of these rules or ORS 656.990;

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- (e) Failing to return required receipts or invoices;
 - (f) Submitting false reimbursement requests or job analyses;
 - (g) Altering an *Authorization for Payment* form or purchasing unauthorized items; or
 - (h) Failing to return a Preferred Worker card if requested by the division.
- (3) Sanctions by the director may include one or more of the following:
- (a) Ordering the person being sanctioned to repay the department for reemployment assistance costs incurred, including the department's legal costs;
 - (b) Prohibiting the person being sanctioned from negotiating or arranging reemployment assistance for such period of time as the director deems appropriate;
 - (c) Decertifying an individual or vocational assistance provider under the authority of OAR 436-120;
 - (d) Ordering an employer or worker ineligible for reemployment assistance for a specific period of time; and
 - (e) Pursuing civil or criminal action against the party.

Stat. Auth.: ORS 656.622, 656.726(4);
Stats. Implemented: ORS 656.622, 656.990
Hist: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05
Amended 12-1-2009 as WCD Admin. Order 09-060, eff. 1-1-2010

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

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

Order of Adoption

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 438

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:

438-035-0008

AMEND:

438-009-0005, 438-010-0005, 438-010-0280, 438-030-0005, 438-030-0020, 438-030-0034, 438-030-0035, 438-030-0065, 438-030-0135, 438-030-0165, 438-035-0005, 438-035-0007, 438-035-0008, 438-035-0012, 438-035-0013, 438-035-0014, 438-035-0016, 438-035-0018, 438-035-0250, 438-105-0500, 438-105-0520, 438-110-0350, 438-120-0005

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 438-030, Claim Closure and Reconsideration, and OAR 438-035, 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 438-009, Oregon Medical Fee and Payment Rules, 438-010, Medical Services, 438-030, Claim Closure and Reconsideration, 438-035, Disability Rating Standards, 438-105, Employer-at-Injury Program, 438-110 Preferred Worker Program, and 438-120, 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.

Fred Bruyns

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Rules Coordinator Name

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