

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



**Workers' Benefit Fund Claims Program
Oregon Administrative Rules
Chapter 436, Division 150**

Effective Jan. 1, 2010

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

In the Matter of the Amendment of Oregon Administrative)	ORDER OF
Rules (OAR):)	ADOPTION
436-150, Workers' Benefit Fund Claims Program)	No. 09-062
)	

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedures in ORS 183.335, amends OAR chapter 436, division 150.

On Sept. 15, 2009, 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 Web site. The Secretary of State included notice of the public hearing in its October 2009 *Oregon Bulletin*. On October 26, 2009, the division held a public hearing as announced. The record remained open for written testimony through October 29, 2009.

SUMMARY OF RULE AMENDMENTS

These rules eliminate references to "guaranty contract," because Senate Bill 559 (2007 Session) replaced the guaranty contract with policy-based proof of coverage and reporting.

FINDINGS

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

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

IT IS THEREFORE ORDERED THAT

- 1) Amendments to OAR chapter 436, division 150 are adopted as administrative order No. 09-062 on this **1st day of Dec. 2009, to be effective Jan. 1, 2010.**
- 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.

Order of Adoption
OAR chapter 436, division 150

DATED this 1st day of December 2009.

/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: WCD-ID, S0, S1, S2, S3, S4, S5, S6, S7, S8, ML, ME

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
WORKERS' BENEFIT FUND CLAIMS PROGRAM**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 150**

436-150-0001 Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726(4) and section 6, chapter 974, Oregon Laws 2001.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0002 Purpose

The purpose of these rules is to establish guidelines for regulating, managing, and disbursing moneys in the Workers' Benefit Fund for the purpose of advancing funds to injured workers who have not received payment of compensation due from an insurer in default.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0003 Applicability of Rules

(1) These rules carry out the provisions of section 6, chapter 974, Oregon Laws 2001.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0005 Definitions

As used in OAR 436-150-0001 through 436-150-0040, unless the context requires otherwise:

(1) "Compensation," for the purposes of this program, means temporary and permanent disability due injured workers pursuant to ORS chapter 656, and out-of-pocket expenses for injured workers in accordance with OAR 436-009-0025, such as prescription and mileage reimbursements. Compensation does not include amounts payable to providers, or benefits payable pursuant to claim settlements or claim disposition agreements.

(2) "Default" means an insurer has failed to make payments of compensation due injured workers pursuant to ORS chapter 656 for which there is no dispute over the right of the worker to receive such compensation or the amount therein.

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

(4) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(5) "Insurer" means an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

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(6) "Oregon Insurance Guaranty Association" or "OIGA" means the association created by ORS 734.550.

(7) "Paying Agency" means the insurer, or the insurer's authorized representative, responsible for paying compensation due under ORS chapter 656.

Stat. Auth.: ORS 656.445, 656.726(4)
Stats. ORS 656.445
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02
Amended 12-1-2009 as WCD Admin. Order 09-062, eff. 1-1-2010

436-150-0006 Administration of Rules

Any orders issued by the division in carrying out the director's authority to enforce ORS chapter 656 and these rules are considered orders of the director.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0008 Administrative Review

(1) Any party as defined by ORS 656.005, and including the Oregon Insurance Guaranty Association, aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party that disagrees with an action or order of the director under these rules, other than as described in section (1) of this rule, may request a hearing by filing a request for hearing as provided in OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat. Auth.: ORS 656.445, 656.726(4)
Stats. Implemented: ORS 656.445, 656.704, 656.740, OL 2005 ch 26
Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02
Amended 12/3/03 as WCD Admin. Order 03-078, eff. 1/1/04
Amended 10/19/05 as WCD Admin. Order 05-070, eff. 1/2/06

436-150-0010 Criteria for Eligibility

(1) In order for the director to authorize expenditures from the Workers' Benefit Fund Claims Program there must be:

(a) Verification from an authority from the insurer's state of domicile that the insurer responsible for payment of compensation is in default, such as a notice of voluntary or involuntary rehabilitation, conservatorship, or other information indicating the insurer cannot or will not make payments of compensation; and

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(b) An order of the director authorizing disbursements to injured workers from the Workers' Benefit Fund Claims Program. The order shall specify the qualifying claims, duration of payment obligation, and maximum expenditure limitation. The maximum expenditure limitation may not exceed the amount of securities on deposit for the insurer pursuant to ORS 731.628.

(2) When expenditures are authorized pursuant to section (1) of this rule, the paying agency shall provide the director with sufficient information, as specified in OAR 436-150-0030(2), to enable the director to advance funds to eligible injured workers.

(3) To be eligible for payment under the program:

(a) Compensation must be due and payable pursuant to ORS chapter 656; and

(b) There must be a record of an insurance policy on file with the director by the insurer covering the employer on the date of injury.

(4) Payments to eligible injured workers in accordance with these rules shall be applied toward the insurer's payment obligations under ORS chapter 656 and will be deducted from compensation due, pursuant to ORS 734.570.

Stat. Auth.: ORS 656.445, 656.726(4)

Stats. ORS 656.445

Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

Amended 12-1-2009 as WCD Admin. Order 09-062, eff. 1-1-2010

436-150-0020 Limitation of Program

(1) Payment of compensation shall be limited to the amount of securities on deposit for the insurer pursuant to ORS 731.628 and only to the extent the monies are available in the Workers' Benefit Fund.

(2) Payments for individual claims shall be limited to compensation that becomes due and payable during the period of default.

(3) Notwithstanding any other provision of these rules, the director may, in the director's discretion, authorize additional benefits for specific claims in cases of extreme hardship.

(4) In the event of insufficient funds in the Workers' Benefit Fund, the director shall have final authority to determine an equitable distribution, which will proportionately distribute the available funds among the claims having qualified for reimbursement under the Program.

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)

Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001

Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02

436-150-0030 Payment of Benefits

(1) Payment of compensation may be made by the director after receipt of documentation that compensation is due and payable.

(2) Documentation to support payment from the Workers' Benefit Fund Claims Program shall be submitted by the paying agent to include, but not be limited to:

(a) Insurer name, address, and policy number;

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- (b) Injured worker name, address, insurer claim number, Workers' Compensation Division claim number, and date of injury;
- (c) Employer name and address;
- (d) Amount, duration, and purpose of compensation due;
- (e) Amounts payable for support pursuant to ORS 656.234, along with supporting documentation; and
- (f) Any other information deemed necessary by the director.

Stat. Auth.: ORS 656.445, 656.726(4)
 Stats. ORS 656.445
 Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02
 Amended 12-1-2009 as WCD Admin. Order 09-062, eff. 1-1-2010

436-150-0040 Accounting and Repayment of Payment of Benefits

(1) The director shall establish an account of record to monitor all expenditures and transactions relating to the Workers' Benefit Fund Claims Program and these rules. The accounting shall provide a detailed record of payments to each injured worker and the respective insurer responsible for the claim to include, but not be limited to, information as specified in OAR 436-150-0030(2).

(2) When the obligation to make payment of compensation is assumed by the Oregon Insurance Guaranty Association (OIGA) due to the insolvency of an insurer, the OIGA shall reimburse the Workers' Benefit Fund for all moneys advanced to injured workers for covered claims, as specified by OAR 734.510(4) and these rules. The OIGA shall reimburse the director within 60 days of receipt of sufficient information necessary to support the covered claims. All moneys received from the OIGA by the director shall be placed into the Workers' Benefit Fund.

(3) If an insurer defaults in its payments to injured workers, but later resumes its obligation to make payments, the insurer shall reimburse the director for any moneys paid to the injured worker. Such payment shall be in such amounts and at such intervals as prescribed by an order of the director. Failure of the insurer to comply with the order of the director may result in civil penalty pursuant to ORS 656.745.

(4) Any dispute over an amount owing the director in accordance with these rules shall be resolved pursuant to OAR 436-150-0008(2).

Stat. Auth.: Section 6, chapter 974, Oregon Laws 2001, ORS 656.726(4)
 Stats. Implemented: Section 6, chapter 974, Oregon Laws 2001
 Hist: Adopted 12/6/01 as WCD Admin. Order 01-063, eff. 1/1/02