

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



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

Effective Jan. 1, 2017

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

Historical rules: 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 [Repeal]

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

Repealed 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0002 Purpose of Rules [Repeal – See rule 0003]

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

Repealed 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0003 Purpose and Applicability of These Rules**(1) Purpose.**

(a) The rules in OAR 436-110 explain who qualifies for and how to request assistance and reimbursements from the Preferred Worker Program.

(b) The Preferred Worker Program encourages the re-employment of workers whose on-the-job injuries result in disability that 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.

(c) The Preferred Worker Program is activated by the worker or by the employer at injury.

(2) Applicability.

These rules apply to all requests for Preferred Worker Program re-employment assistance received by the division on or after the effective date of these rules.

(3) Submitting documents or information, calculating time.

(a) Documents or information required under these rules to be submitted to the division may be submitted in any of the following ways:

(A) Mailed to the division's mailing address with sufficient postage and placed in the custody of the U.S. Postal Service;

(B) Physical delivery to the division's Salem office;

(C) Faxed, if the document transmitted indicates it has been delivered by fax, is sent to the correct fax number, and indicates the date it was sent; or

(D) Any other method authorized by the director.

(b) Timeliness under these rules is determined as follows:

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- (A) If a document is mailed, it will be considered submitted on the date it is postmarked.
- (B) If a document is delivered, it must be delivered during regular business hours and marked as received to be considered submitted on that date.
- (C) If a document is faxed, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date.
- (c) Time periods allowed under these rules are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

(4) Availability of forms.

The bulletins and forms referenced in these rules are available on the division's website at wcd.oregon.gov.

(5) Director's discretion.

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

Statutory authority: ORS 656.622, 656.726(4)
 Statutes implemented: ORS 656.622
 Hist: Amended 10-3-2012 as Admin. Order 12-058, eff. 11-1-2012
 Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17
 See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0005 Definitions

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

- (1) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.
- (2) "Date of eligibility" means the date the director determines a worker is a preferred worker.
- (3) "Date of hire" means the date the worker starts work as a preferred worker.
- (4) "Department" means the Department of Consumer and Business Services.
- (5) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.
- (6) "Disability" means a permanent physical or mental restriction or limitation 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) "Employer at injury" means the organization that employed the worker when the worker sustained the injury or occupational disease.

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(9) "Exceptional disability" means a disability equal to or greater than the complete loss, or loss of use, of both legs or a brain injury that results in impairment equal to or greater than a Class 3 under OAR 436-035-0390(10). The director determines 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.

(10) "Fund" means the Workers' Benefit Fund under ORS 656.605.

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

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

(13) "Premium assessment" means monies due the director under ORS 656.612 and 656.614.

(14) "Regular work" means the job the worker held at the time of the injury, claim for aggravation, or Own Motion opening under ORS 656.278.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0006 Workers' Benefit Fund

(1) 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 final authority to determine how the funds will be disbursed.

(2) Monies in the Workers' Benefit Fund may not be used to provide concurrent benefits under the Preferred Worker Program and the Employer-at-Injury Program under OAR 436-105 for the same worker for the same period of time, with the exception of claims costs reimbursed under OAR 436-110-0330.

(3) The director may use monies from the fund for activities to provide information about and encourage re-employment 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 re-employment assistance programs and associated production costs; and

(b) Public re-employment assistance program conferences and workshops.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0007 Denial of Requests, Reconsideration, Director's Review

(1) Denial of requests for assistance.

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

(2) Reconsideration.

- (a) Parties directly affected by a Preferred Worker Program decision of the director may request reconsideration by submitting a written request to the division no later than 60 days after the date the decision was issued.
- (b) The request for reconsideration must specify the reasons why the decision is appealed and may include additional documentation.
- (c) The director will reconsider the decision and will notify all directly affected parties of its decision upon reconsideration.
- (d) Reconsideration must precede a director's review under section (3) of this rule.

(3) Director's review.

- (a) If, upon reconsideration, the director upholds the original decision, it will be referred for director's review. A party does not need to request director's review.
- (b) 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.
- (c) 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.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0150 Pilot Projects

- (1) The director may develop one or more pilot projects to test alternatives to the current system of re-employing 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.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Adopted 6/5/13 as WCD Admin. Order 13-055, eff. 6/7/13

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

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

(1) Insurer participation.

The insurer of the employer at injury must be an active participant in providing re-employment assistance under the Preferred Worker Program.

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(2) Notice of assistance available.

The insurer must notify the worker and employer at injury in writing of the assistance available from the Preferred Worker Program. A notice must be issued:

- (a) Within five days of the worker being declared medically stationary;
- (b) Upon determination of the worker's eligibility or ineligibility for vocational assistance under ORS 656.340 and OAR 436-120; and
- (c) Upon approval of a claim disposition agreement.

(3) Required notice language.

(a) The notice to the worker required by section (2) of this rule must be 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.

Call: 503-947-7588 or 800-445-3948 (toll-free)

Fax: 503-947-7581

Or write the Preferred Worker Program at P.O. Box 14480, Salem, Oregon 97309-0405 or pwdp.oregon@oregon.gov

(b) The notice to the employer at injury required by section (2) of this rule must be 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 restrictions 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 the Workers' Compensation Division 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.**

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.

Call: 503-947-7588 or 800-445-3948 (toll-free)

Fax: 503-947-7581

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**Or write the Preferred Worker Program at P.O. Box 14480, Salem, Oregon
97309-0405 or pwp.oregon@oregon.gov**

(4) Reporting information to the division.

The insurer must provide the division with preferred worker information upon the following:

- (a) Claim closure according to ORS 656.268, by submitting Form 1503, "Insurer Notice of Closure Summary," as prescribed by OAR 436-030-0015(1);
- (b) Within 30 calendar days of an order on reconsideration, opinion and order of an administrative law judge, order on review by the board, decision of the Court of Appeals or Supreme Court, or stipulation between the parties that grants initial permanent disability after the latest opening of the worker's claim; and
- (c) Approval of a claim disposition agreement, if documented medical evidence indicates permanent restrictions exist as a result of the injury or disease, and the worker is unable to return to regular work. If a claim disposition agreement is approved before the worker is medically stationary, the insurer must continue to process the claim to medically stationary for purposes of the Preferred Worker Program.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622; 656.726(4)

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wed.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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 are:

(1) Time frame.

- (a) For Preferred Worker Program assistance other than premium exemption, the employer at injury must request Preferred Worker Program assistance from the division within 180 days of the worker's claim closure date, except as provided in subsection (1)(c).
- (b) Conditions for employer at injury activated premium exemption are provided in OAR 436-110-0325.
- (c) When worksite modifications are provided, and the modifications are completed and verified by the director more than 150 days after the worker's claim closure date, the employer at injury will have 30 calendar days from the verification date to request other assistance.

(2) Job offer.

The worker must agree to accept the new or modified regular job with the employer at injury in writing. Form 4903, "Preferred Worker Job Offer Letter," is a sample job offer letter. The job offer must include:

- (a) The start date, which is the date the worker begins receiving payment for the new or modified job. If the job starts after the modifications are in place, so note;

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- (b) Wage and hours;
- (c) Job site location; and
- (d) Description of job duties that includes physical requirements.

(3) Additional modifications.

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

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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

(1) Employer eligibility.

The eligibility requirements for the Preferred Worker Program for an employer, including the employer at injury, 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 director under ORS 656.850; and
- (e) The employer is not currently ineligible for preferred worker benefits under OAR 436-110-0900.

(2) Worker eligibility.

The eligibility requirements for a worker for the Preferred Worker Program are:

- (a) The worker has an accepted disabling Oregon compensable injury or occupational disease. Injuries to inmates covered under ORS 655.505 to 655.555 and OAR 125-160 do not qualify;
- (b) The worker will not be able to return to regular work, as indicated by medical evidence and due to injury-caused restrictions, under any claim opening;
- (c) Medical documentation indicates permanent restrictions exist as a result of the injury or disease, whether or not an order has been issued awarding permanent disability;
- (d) The worker is authorized to work in the United States; and
- (e) The worker complies with the Oregon workers' compensation law.

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(3) Work experience program participants, apprentices, and trainees.

(a) Individuals covered under ORS 656.033, 656.046, 656.135, or 656.138, are eligible for the Preferred Worker Program if they otherwise meet the eligibility requirements in section (2) of this rule.

(b) For purposes of the Preferred Worker Program, for individuals covered under ORS 656.033, 656.046, 656.135, or 656.138, the job for which the individual was being trained is considered regular work.

(4) Self-employment.

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.

(5) Ending eligibility.

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; or

(f) The employer no longer meets the eligibility requirements under section (1) of this rule.

(6) Reinstatement of eligibility.

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

(7) Redetermination of eligibility.

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

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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436-110-0320 Preferred Worker Card

- (1) The division will issue a preferred worker card to eligible workers. The card identifies a worker as being eligible to offer an employer Preferred Worker Program assistance.
- (2) The division will issue a preferred worker card:
 - (a) Automatically at the time of claim closure based upon insurer submission of preferred worker information as specified in OAR 436-110-0240(4)(a); or
 - (b) When the division determines the worker is eligible for the Preferred Worker Program.
- (3) The division may inactivate a preferred worker card if:
 - (a) The card was issued in error; or
 - (b) Any reason for ending Preferred Worker Program eligibility as specified in OAR 436-110-0310(5) applies.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0325 Premium Exemption**(1) General provisions.**

- (a) The purpose of premium exemption is to provide an incentive for employers to hire and retain preferred workers.
- (b) 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. When premium exemption is in place, the employer does not report, and the insurer may not use, the preferred worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer must report and pay the Workers' Benefit Fund assessment and withhold employee contributions as required by ORS 656.506 and OAR 436-070. The employer must start paying insurance premiums and premium assessments when premium exemption ends.

(2) Employer eligibility.

To be eligible for premium exemption the employer must:

- (a) Hire a preferred worker or, for the employer at injury or aggravation, bring back its preferred worker to a new or modified job; and
- (b) Notify the division within 90 days from the date of eligibility or the date of hire, whichever is later.

(3) Exclusion.

Premium exemption may not be used if the worker has permanent restrictions but returns to regular work.

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(4) Division notification.

- (a) The employer must notify the division within 90 days from the date of eligibility or the date of hire, whichever is later.
- (b) If the director approves premium exemption, the division will notify the employer and insurer of the premium exemption period.
- (c) If the director does not approve premium exemption, the division will notify the employer.

(5) Premium exemption period.

- (a) For the employer at injury or aggravation, premium exemption starts on the date of hire or the date of eligibility, whichever is later.
- (b) 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 division within 90 days from the date of hire that it has hired a preferred worker, premium exemption starts on the date of hire.
- (c) The three-year premium exemption period may not be extended, even if the preferred worker's job duties change or the employer's ownership or legal status changes.

(6) Claims costs.

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

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0330 Claim Cost Reimbursement**(1) General provisions.**

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 under OAR 436-120-0720, claim disposition agreements under ORS 656.236, disputed claim settlements under ORS 656.289, stipulations, 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 chapter 656

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and diagnostic tests, including independent medical examinations necessary to determine compensability of the claim;

(d) The administrative cost factor that will apply to claim costs is published in Bulletin 316; and

(e) The claim may 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) Reimbursement request process.

The insurer must request claim cost reimbursement as follows:

(a) A request for reimbursement must be submitted to the division within 15 months of the date on which payment was made;

(b) The insurer must use Form 3014, "Preferred Worker Program Quarterly Cost Reimbursement Request"; and

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

(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; and

(B) Any other information required by the director.

(3) Costs not reimbursable.

Requests for reimbursement may 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 or 656.289 not previously approved by the director;

(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) Audit, disallowed amounts.

Periodically, the director will audit the insurer's file 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:

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- (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; or
- (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) Reinstatement of reimbursement.

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 monies previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) Reimbursement of settlement amounts.

A claim disposition agreement under ORS 656.236, a disputed claim settlement under 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 reimbursement:

- (a) The insurer must obtain prior written approval of the agreement from the director. The proposed agreement must be submitted to the division before being submitted 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 director, in order to be approved for reimbursement from the fund; and
- (c) A request for approval of the proposed agreement must include:
 - (A) A copy of the proposed agreement, containing appropriate signatures and a signature line for director 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 director.

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0335 Wage Subsidy General Provisions

Wage subsidy provides an employer with partial reimbursement of a worker's gross wages for a

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specified period. Wage subsidy benefits are subject to the following conditions:

(1) Wage subsidy agreement form.

A completed Form 2190, "Preferred Worker Wage Subsidy Agreement," must be submitted to the division. Signature and time frame requirements for employer at injury activated wage subsidy are in OAR 436-110-0336(2), and requirements for worker-activated wage subsidy are in OAR 436-110-0337(1).

(2) Effective date.

The effective date of the wage subsidy agreement is mutually agreed to by the director, employer, and worker if applicable.

(3) Time limits, reimbursement rate.

A wage subsidy is limited to a duration of 183 calendar days and a reimbursement rate of 50 percent for the approved period. For a worker with an exceptional disability, a wage subsidy duration is limited to 365 calendar days and a reimbursement rate of 75 percent for the approved period.

(4) Interruption and extension of agreement.

A wage subsidy agreement may be interrupted once for reasonable cause and extended to complete the 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.

(5) Pay structure.

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

(6) Prevailing wage.

Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined as follows:

- (a) Examine the wages paid by the employer for other workers doing the same job;
- (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 director will determine the wage subject to reimbursement.

(7) May not be combined with vocational training.

Preferred Worker Program wage subsidies may not be combined with a wage reimbursement for a training plan under OAR 436-120, "Vocational Assistance to Injured Workers."

(8) Changes in employer.

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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 director as long as the worker's job remains the same and the new employer is eligible under OAR 436-110-0310(1).

(9) Reimbursement requests.

(a) A completed and signed Form 2968, "Preferred Worker Program Wage Subsidy Reimbursement Request," must be submitted to the division with a legible copy of the worker's payroll records.

(b) Payroll records must include:

(A) The date of payment;

(B) The dates of work covered by the payment;

(C) The rate or rates of pay;

(D) Gross wages;

(E) The regular hourly rate or rates of pay, the number of regular hours worked, and pay for those hours;

(F) The number of overtime hours worked, if any, and pay for those hours; and

(G) The overtime rate or rates of pay.

(c) All requests for reimbursement must be made within one year of the wage subsidy agreement end date.

(10) May not be used for regular work.

Wage subsidy may not be used if the worker has permanent restrictions but returns to regular work.

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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 Form 2190, "Preferred Worker Wage Subsidy Agreement," and submit it to the division in the time frames allowed in OAR 436-110-0290(1).

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(3) The completed and signed job offer required in OAR 436-110-0290(2) must accompany the request for wage subsidy benefits, unless it was already submitted with another request.

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

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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 Form 2190, “Preferred Worker Wage Subsidy Agreement,” and submit it to the division within three years of the date of hire.

(2) A preferred worker may use wage subsidy as many times as needed, up to a maximum total reimbursement of \$40,000. A worker with an exceptional disability may use wage subsidy twice with no maximum total reimbursement rate. The maximum total reimbursement will be restored if there is a subsequent claim closure, and the worker is unable to return to regular work.

(3) If the employer at injury uses wage subsidy for a job, the worker may not use wage subsidy for the same job.

(4) A worker can use a second wage subsidy with the same employer for a new job if:

(a) The majority of job duties have changed; and

(b) At least one year has passed from the end of the first wage subsidy period.

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0345 Employment Purchases and Placement Services

(1) General provisions.

An employment purchase is assistance necessary for a worker to find, accept, or retain employment in Oregon. Purchases may be provided for a job with a nonsubject employer in Oregon, as long as that employer complies with the appropriate workers’ compensation law. Employment purchases may not be used if the worker has permanent restrictions but returns to regular work. Except as provided in subsection (2)(i) of this rule, all purchases become the worker’s property.

(2) Types of purchases.

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

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requirements of an obtained job. This category can be used as often as necessary up to a maximum of \$2,000, with each use limited to \$1,000;

(b) **Temporary lodging, meals, and mileage** to attend instruction when overnight travel is required. Reimbursable costs must be incurred within a 30-day period of time. The cost of meals, lodging, public transportation, and use of a personal vehicle will be reimbursed at the rate published in Bulletin 112. This category can be used as often as necessary up to a maximum of \$1,000;

(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. This category can be used as often as necessary up to a maximum of \$5,000, with each use limited to \$2,500;

(d) **Clothing** required for the job. This category can be used as often as necessary up to a maximum of \$1,000, with each use limited to \$500;

(e) **Transportation-related purchases**, not including vehicles or vehicle maintenance, that enable the worker to commute to a job such as, but not limited to, bus fare, gasoline, or repairs to an existing vehicle. This category can be used as often as necessary up to a maximum of \$1,000, requested within 90 days of hire;

(f) **Moving expenses** for a job if the new worksite is in Oregon and 50 or more 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 to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. The worker must complete, sign, and submit Form 3293, "Preferred Worker Moving Assistance Agreement." 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 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, nonrefundable deposit in an amount not to exceed the first month's rent, and a required credit check for that residence;

(g) Initiation fees, or back dues and one month's current dues, required by a **labor union**. This category can be used as often as necessary up to a maximum of \$1,000;

(h) **Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees** required for the job. This category can be used as often as necessary up to a maximum of \$1,000, with each use limited to \$500;

(i) **Worksite creation** costs that are limited to equipment, furnishings, or other things the employer needs to create a new job for the worker. A completed and signed Form 4122, "Preferred Worker Worksite Creation Agreement," must be submitted to the division. All

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items purchased are the property of the employer. This category can be used as often as necessary up to a maximum of \$10,000, with each use limited to \$5,000; 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) Payment and reimbursement.

(a) Costs of employment purchases will be paid by reimbursement or by other instrument of payment approved by the director.

(b) The director will provide payment but will not otherwise assume responsibility for employment purchases.

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

(d) All requests for reimbursement must be made within one year of the end date on Form 2350, "Preferred Worker Employment Purchase Agreement."

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

(4) Placement services.

(a) **Placement assistance services** provided to a preferred worker by a certified vocational counselor or any public or private agency that provides placement services are reimbursable as provided in this section.

(A) Placement assistance services provide the worker with skills to find employment, including, but not limited to, intake, resume writing, interview skills, resource development, online application development, job search skills, job coaching, and employer contacts.

(B) The counselor or agency representative and the worker must complete, sign, and submit to the division Form 4875, "Preferred Worker Placement Assistance Agreement," with an estimate of services to be provided.

(C) Placement assistance is limited to a maximum expenditure of \$1,000 for services described in paragraph (A). Payment for these services is based on a billable hourly rate of \$85 (or at one-half rate for travel) and may be made to the counselor or agency that provided placement services to enable the worker to find employment, regardless of whether the worker finds employment.

(D) Only one placement assistance agreement may be in approved status at any given time.

(E) Placement assistance may not be combined with vocational assistance under OAR 436-120.

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- (F) If the worker finds employment as a result of the placement services, an employment placement payment of \$500 may be paid to the counselor. If the worker remains employed in that position for at least 30 days, an additional incentive payment of \$500 may be paid to the counselor or agency that provided the placement services.
- (G) Employment placement payment and subsequent incentive payment is limited to a maximum of three employment placements.
- (H) Placement and incentive payments are limited to one use each per employer.
- (b) To request **payment for placement services** provided, a completed and signed Form 5135, "Preferred Worker Program Placement Payment Request," must be submitted to the division along with a detailed invoice of services provided.
- (c) All requests for reimbursement for placement services must be made within one year of the placement assistance agreement end date.

Statutory authority: ORS 656.726(4), 656.622
 Statutes implemented: ORS 656.622
 Hist.: Amended 9-15-10 as WCD Admin. Order 10-055, eff. 10-12-10
 Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17
 See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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

Conditions for use of employment purchases by the employer at injury are:

- (1) The employer must submit to the division a completed Form 2350, "Preferred Worker Employment Purchase Agreement," listing items that are required of the worker to perform the job for which the worker is employed; and
- (2) The employer may use each employment purchase category once per eligibility period.

Statutory authority: ORS 656.726(4), 656.622
 Statutes implemented: ORS 656.622
 Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07
 Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17
 See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0347 Employment Purchases – Worker Activated

- (1) Conditions for use of employment purchases by a worker are:
 - (a) 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 items that are required of the worker to obtain or perform the job;
 - (b) Employment purchases may be used with a nonsubject employer in Oregon; and
 - (c) The limits for each type of purchase will be restored if there is a subsequent claim closure and the worker is unable to return to regular work.
- (2) A preferred worker may request employment purchases as follows:

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(a) The worker must contact the division directly for assistance in receiving employment purchases. The worker may make the request before employment, as long as there is a job offer with a start date, but not more than three years after the date of hire; and

(b) Form 2350, "Preferred Worker Employment Purchase Agreement," must be completed and signed by the worker and employer and submitted to the division. Only the worker's signature is required if the request is for moving expenses, placement assistance, or the miscellaneous category.

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0350 Worksite Modification – General Provisions

(1) Worksite modification defined.

(a) Worksite modification means altering a worksite by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the restrictions caused by a compensable injury or occupational disease.

(b) For purposes of the Preferred Worker Program, "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, client's, or worker's premises, property, or 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.

(2) Conditions for use.

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

(a) Modifications must allow the worker to perform the job duties within the worker's injury-caused permanent restrictions. In order to determine appropriate worksite modifications, the division worksite modification 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 restrictions. The job analysis may be submitted to the attending physician for approval before the modification is performed;

(c) Except as provided in OAR 436-110-0351(2) for employer at injury activated modifications, modifications can be used up to a maximum of \$50,000 per eligibility period, with each use limited to \$35,000. If the worker has an exceptional disability, a modification more than \$35,000 may be provided;

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- (d) Modifications not to exceed \$2,500 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 division worksite modification 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 modifications 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, "Vocational Assistance to Injured Workers," or other similar on-the-job training program when the trainer is not the employer at injury. A modification will not be approved for any other type of training;
- (f) Modifications up 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 with any applicable classification or endorsement;
- (h) Rented or leased vehicles and other equipment will not be modified;
- (i) Modifications must be reasonable, practical, and feasible, as determined by the director;
- (j) When the director determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon director approval, funds equal to the cost of the form of modification identified by the director 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 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 director approval and are limited to a cost of up to \$5,000 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 client on the end date of the worksite modification agreement, or when the worker's employment ends, whichever occurs first. The director will determine ownership of worksite modification equipment before approving an agreement and has the final authority to assign property;

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(n) The director may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent restrictions. 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 published in Bulletin 112. The cost of the services described in this subsection must be paid by the insurer;

(o) If the property provided for the modification is damaged, in need of repair, or lost, the director 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 before the end of the agreement without director 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 before the end of the agreement without director approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) Requests for assistance, payment, and reimbursement.

(a) A worker, employer, or the worker's or employer's representative, may request worksite modification assistance.

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

(c) The director must create and approve a completed and signed worksite modification agreement before any reimbursement or payment.

(d) Costs of approved worksite modifications will be paid by reimbursement or other instrument of payment approved by the director.

(e) The director will provide payment but will not otherwise assume responsibility for worksite modifications.

(f) The person or entity that purchased the items 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.

(g) All requests for reimbursement must be made within one year of the date the worksite modification agreement ends. No specific form is required.

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

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

Hist: Amended 1/29/15 as Admin. Order 15-055, eff. 3/1/15

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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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 its 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(1);
- (2) Modifications are limited to a maximum of \$35,000 on the claim that qualified the worker for assistance. A modification of more than \$35,000 may be provided if the worker has an exceptional disability; and
- (3) 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.

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0352 Worksite Modification – Worker Activated

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

- (1) Modifications may be provided for requests received within three years from the date of hire;
- (2) A worker may use worksite modification assistance as often as necessary but only once per employer, with each use is limited to \$35,000; and
- (3) A worker can use a second worksite modification with the same employer for a new job if the majority of the job duties have changed.

Statutory authority: ORS 656.726(4), 656.622

Statutes implemented: ORS 656.622

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0850 Audits

- (1) Insurers and employers are subject to periodic program and fiscal audits by the director. 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 director directly or from future reimbursements by offset. If the director finds upon audit that procedures that led to disallowed reimbursements are still being used, the director may withhold further reimbursements until corrections satisfactory to the director are made.
- (2) An insurer or employer must maintain claim records, notices, worker payroll records, reports, receipts, and documentation of payment supporting re-employment assistance costs for which reimbursement has been requested or payment has been made. These records must be maintained for a period of three years after the last reimbursement request or payment.

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(3) The director reserves the right to visit the worksite to determine compliance with the agreement under which re-employment assistance has been provided.

Statutory authority: ORS 656.455, 656.622, 656.726(4), 731.475;
Statutes implemented: ORS 656.455, 656.622, 731.475
Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07
Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-110-0900 Sanctions

(1) Penalties for false statement or report or misrepresentation.

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 knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for sanction.

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 re-employment assistance. Examples of misrepresentation include:
 - (A) Changing a job description or job title in order to obtain benefits when there are not corresponding job duty changes; and
 - (B) Obtaining a worker's signature on an incomplete, incorrect, or blank agreement or reimbursement request;
- (b) Making a serious error or omission that resulted in the director 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;
- (e) Failing to return required receipts or invoices;
- (f) Submitting false reimbursement requests or job analyses; or
- (g) Altering a payment or form, or purchasing unauthorized items.

(3) Possible sanctions.

The director may order one or more of the following sanctions:

- (a) Ordering the person being sanctioned to repay the department for re-employment assistance costs incurred, including the department's legal costs;
- (b) Prohibiting the person being sanctioned from negotiating or arranging re-employment assistance for such period of time as the director deems appropriate;

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(c) Decertifying an individual or vocational assistance provider under the authority of OAR 436-120;

(d) Ordering an employer or worker ineligible for re-employment assistance for a specific period of time; or

(e) Pursuing civil or criminal action against the party.

Statutory authority: ORS 656.622, 656.726(4);

Statutes implemented: ORS 656.622, 656.745, 656.990

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

Amended 11/28/16 as WCD Admin. Order 16-057, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

**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
436-110, Preferred Worker Program)	No. 16-057
)	

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 110.

On Sept. 15, 2016, 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 October, 2016 *Oregon Bulletin*. On Oct. 24, 2016, a public hearing was held as announced. The record remained open for written testimony through Oct. 28, 2016.

SUMMARY OF RULE AMENDMENTS

The agency has amended OAR 436-110, "Preferred Worker Program" (PWP) to:

- Improve the clarity of the rules through improved organization, plain language, and definition of terms;
- Clarify that monies in the Workers' Benefit Fund may not be used to provide concurrent benefits under the Preferred Worker Program and the Employer-at-Injury Program for the same worker for the same period of time, except for reimbursement of claims costs;
- Clarify how parties may request reconsideration if they are directly affected by a decision of the Workers' Compensation Division regarding the PWP;
- Specify that if a claim disposition agreement is approved before the worker is medically stationary, the insurer must continue to process the claim for purposes of the PWP;
- Explain that work experience program participants, apprentices, and trainees covered under ORS 656.033, 656.046, 656.135, or 656.138, are eligible for the PWP if they otherwise meet the eligibility requirements in the rules, and that the job for which the individual was being trained is regular work;
- Revise the requirements for premium exemption, requiring the employer to notify the division instead of the insurer;
- Require that requests for claim cost reimbursement must be submitted within 15 months of the date on which payment was made;
- More specifically describe what payroll records in support of reimbursement requests must include;
- Place a dollar maximum on wage subsidy for a worker and remove the limit on the number of times wage subsidy may be used unless the worker has an exceptional

disability – if so the worker may use wage subsidy twice with no maximum total reimbursement;

- Provide that a worker may use a second wage subsidy with the same employer for a new job if the majority of job duties have changed and at least one year has passed from the end of the first wage subsidy period;
- Increase maximum allowed payments for several categories of employment purchases: tuition, books, and fees; lodging, meals, and mileage; tools and equipment; clothing; occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job; and worksite creation;
- Remove the limits on the number of uses for several categories of employment purchases: tuition, books, and fees; tools and equipment; and clothing;
- Add a new type of employment purchase – transportation-related purchases that enable a worker to commute to a job (does not include vehicles or vehicle maintenance);
- Describe placement services and provide that payment will be made up to a dollar maximum, regardless of whether the worker finds employment, but provide for additional payments if the worker is employed as a result of the services and again if the worker remains in that position for at least 30 days;
- Require that requests for payment for placement services be submitted within one year of the end date of the placement assistance agreement;
- Increase the dollar maximums allowed for worksite modification services and set a per-use cap;
- Increase the dollar maximums allowed for modifications to prevent further injury, rental of worksite modification items, and consultative services;
- For worker-activated worksite modification assistance, remove the limit on the number of times a worker may use the assistance, but limit use to once per employer, unless the job is a new job; and
- Provide that a worker can use a second worksite modification with the same employer for a new job if the majority of the job duties have changed.

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 110 are adopted as **administrative order No. 16-057 on this 28th day of November, 2016, to be effective Jan. 1, 2017.**
- 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 28th day of November, 2016.

/s/ Louis Savage

Louis Savage, 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
11-28-16 9:19 AM
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 01/01/2017 Rulemaking Notice was published in the October 2016 Oregon Bulletin.

RULE CAPTION

Amendments to rules governing return-to-work incentive programs and vocational assistance

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:

AMEND:

436-105-0003, 436-105-0005, 436-105-0006, 436-105-0008, 436-105-0500, 436-105-0510, 436-105-0511, 436-105-0512, 436-105-0520, 436-105-0530, 436-105-0540, 436-105-0550, 436-105-0560, 436-110-0003, 436-110-0005, 436-110-0006, 436-110-0007, 436-110-0150, 436-110-0240, 436-110-0290, 436-110-0310, 436-110-0320, 436-110-0325, 436-110-0330, 436-110-0335, 436-110-0336, 436-110-0337, 436-110-0345, 436-110-0346, 436-110-0347, 436-110-0350, 436-110-0351, 436-110-0352, 436-110-0850, 436-110-0900, 436-120-0003, 436-120-0005, 436-120-0008, 436-120-0012, 436-120-0115, 436-120-0145, 436-120-0165, 436-120-0175, 436-120-0185, 436-120-0410, 436-120-0443, 436-120-0445, 436-120-0500, 436-120-0510, 436-120-0520, 436-120-0530, 436-120-0700, 436-120-0710, 436-120-0720, 436-120-0755, 436-120-0800, 436-120-0810, 436-120-0820, 436-120-0840, 436-120-0900, 436-120-0915

REPEAL:

436-105-0001, 436-105-0002, 436-110-0001, 436-110-0002, 436-120-0001, 436-120-0002, 436-120-0006, 436-120-0014, 436-120-0016, 436-120-0017, 436-120-0018, 436-120-0125, 436-120-0135, 436-120-0449, 436-120-0830

RENUMBER:

AMEND AND RENUMBER:

436-120-0007 to 436-120-0147, 436-120-0155 to 436-120-0117, 436-120-0340 to 436-120-0157, 436-120-0400 to 436-120-0177, 436-120-0430 to 436-120-0197, 436-120-0448 to 436-120-0523, 436-120-0451 to 436-120-0527, 436-120-0455 to 436-120-0187

Statutory Authority:

656.340, 656.622, 656.726(4)

Other Authority:

Statutes Implemented:

656.340, 656.622

RULE SUMMARY

The agency has amended OAR 436-105, "Employer-at-Injury Program" (EAIP) to:

- Improve the clarity of the rules through improved organization, plain language, and definition of terms;
- Clarify the purpose of EAIP assistance;
- Clarify that monies in the Workers' Benefit Fund may not be used to provide concurrent benefits under the Employer-at-Injury Program and the Preferred Worker Program for the same worker for the same period of time, except for reimbursement of claims costs;
- Clarify how parties may request reconsideration if they are directly affected by a decision regarding the EAIP;
- Require that a medical release specify the worker's hourly restrictions if the release is for part-time work or fewer hours than the worker normally worked before the injury;
- Limit the effective period for a medical release to 30 days if the release does not specify an end date or follow-up date, no subsequent

medical release is issued, and there is no indication that the worker followed up with the medical service provider;

- Require that all EAIP documentation be prepared and in the insurer's possession before reimbursement is requested from the division;
- More specifically describe what payroll records must include;
- Specify that EAIP eligibility ends when Preferred Worker Program benefits, including premium exemption, (except claim cost reimbursement) begin;
- Clarify that the EAIP may be used only once per worker per claim opening or request for reopening;
- State that modifications and purchases must be ordered before the end of the EAIP;
- Expressly exclude reimbursement for extended warranties for worksite modifications and purchases that are in addition to the standard or manufacturer's warranty;
- Broaden the description of how an insurer must display receipt dates on documentation to accommodate non-physical date stamps and to be consistent with claim processing rules;
- State that if the director finds that procedures that led to disallowed reimbursements are still being used, the director may withhold further reimbursements until corrections satisfactory to the director are made, consistent with language in OAR 436-110; and
- Provide that if there is conflicting documentation regarding eligibility for reimbursement for EAIP services, the director will use a preponderance-of-evidence standard to make its decision, and if there is no clear preponderance, reimbursement will be denied.

The agency has amended OAR 436-110, "Preferred Worker Program" (PWP) to:

- Improve the clarity of the rules through improved organization, plain language, and definition of terms;
- Clarify that monies in the Workers' Benefit Fund may not be used to provide concurrent benefits under the Preferred Worker Program and the Employer-at-Injury Program for the same worker for the same period of time, except for reimbursement of claims costs;
- Clarify how parties may request reconsideration if they are directly affected by a decision of the Workers' Compensation Division regarding the PWP;
- Specify that if a claim disposition agreement is approved before the worker is medically stationary, the insurer must continue to process the claim for purposes of the PWP;
- Explain that work experience program participants, apprentices, and trainees covered under ORS 656.033, 656.046, 656.135, or 656.138, are eligible for the PWP if they otherwise meet the eligibility requirements in the rules, and that the job for which the individual was being trained is regular work;
- Revise the requirements for premium exemption, requiring the employer to notify the division instead of the insurer;
- Require that requests for claim cost reimbursement must be submitted within 15 months of the date on which payment was made;
- More specifically describe what payroll records in support of reimbursement requests must include;
- Place a dollar maximum on wage subsidy for a worker and remove the limit on the number of times wage subsidy may be used unless the worker has an exceptional disability - if so the worker may use wage subsidy twice with no maximum total reimbursement;
- Provide that a worker may use a second wage subsidy with the same employer for a new job if the majority of job duties have changed and at least one year has passed from the end of the first wage subsidy period;
- Increase maximum allowed payments for several categories of employment purchases: tuition, books, and fees; lodging, meals, and mileage; tools and equipment; clothing; occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job; and worksite creation;
- Remove the limits on the number of uses for several categories of employment purchases: tuition, books, and fees; tools and equipment; and clothing;
- Add a new type of employment purchase - transportation-related purchases that enable a worker to commute to a job (does not include vehicles or vehicle maintenance);
- Describe placement services and provide that payment will be made up to a dollar maximum, regardless of whether the worker finds employment, but provide for additional payments if the worker is employed as a result of the services and again if the worker remains in that position for at least 30 days;
- Require that requests for payment for placement services be submitted within one year of the end date of the placement assistance agreement;
- Increase the dollar maximums allowed for worksite modification services and set a per-use cap;
- Increase the dollar maximums allowed for modifications to prevent further injury, rental of worksite modification items, and consultative services;
- For worker-activated worksite modification assistance, remove the limit on the number of times a worker may use the assistance, but limit use to once per employer, unless the job is a new job; and
- Provide that a worker can use a second worksite modification with the same employer for a new job if the majority of the job duties have changed.

The agency has amended OAR 436-120, "Vocational Assistance to Injured Workers" to:

- Improve the clarity of the rules through improved organization, plain language, definition of terms, and removal of obsolete provisions;
- Provide that if the worker returns to work with the employer at injury, the division may verify whether the employment is suitable;
- Clarify procedural requirements for administrative review and resolution of disputes;
- State that all notices and warnings must be copied to the division;
- State that a notice is not effective until it is mailed to all required parties including the worker's legal representative;

- Repeal the rule addressing notification of employment and reinstatement rights and responsibilities, because these statutory provisions are sufficiently described in ORS 656.262, 656.340, and ORS chapter 659A;
- Repeal rules allowing postponement of a worker's vocational eligibility evaluation, and allow deferral in specified circumstances when the employer at injury has activated Preferred Worker Program benefits;
- Remove the definition of "likely eligible" and clarify when an eligibility evaluation is required;
- Clarify that if a worker requests vocational assistance when the insurer is not required to do an eligibility evaluation, the insurer may not deny eligibility;
- Clarify the timeframe for completing an eligibility evaluation, including notifying the worker of the results;
- Allow the counselor to extend the time to complete the eligibility evaluation if the counselor is unable to obtain needed information;
- Include specified circumstances in which the worker does not need to be available in Oregon;
- Explain that work experience program participants, apprentices, and trainees covered under ORS 656.033, 656.046, 656.135, or 656.138, are eligible for vocational assistance if they otherwise meet the eligibility criteria; and define employer at injury, regular employment, and suitable wage for those individuals;
- Clarify the circumstances under which the insurer may end vocational assistance after a worker has been employed in suitable employment due to an employer-at-injury use of the PWP;
- Specify that the insurer and worker must agree on a counselor rather than a vocational assistance provider;
- Require that if the worker and insurer do not agree on a counselor or on a change of counselor, the insurer must notify the division within five days;
- List the responsibilities of the worker and counselor in training and direct employment plans;
- Remove outdated language regarding vocational evaluations;
- Clarify that training may be extended for a worker with an "exceptional loss of earning capacity" if the extension will allow the worker to obtain, at the time of completion of the training program, a wage what is as close as possible to the adjusted weekly wage and greater than could be expected with a shorter program;
- Require that the insurer provide further training to a worker when the initial plan will not be or was not successful to prepare the worker for suitable employment;
- Increase the allowable time (months) for basic education, occupational skills training, and formal training;
- Require the training plan to notify the worker if temporary disability benefits may end before training ends;
- Require the insurer to approve or disapprove a training plan within 14 days;
- Require the insurer to issue a written warning before ending an academic program for specified reasons;
- Require the insurer to pay for approved direct worker purchases within 30 days after the insurer receives the worker's request or proof of payment, whichever is later;
- Remove as factors the insurer may consider in determining the necessity of direct worker purchases: pre-injury net income compared with post-injury net income; family income; and evidence of financial hardship;
- Reduce the time within which an insurer must pay vocational assistance providers' bills for services from 60 to 30 days from receipt; and
- Allow continuing education credits for counselors who teach a class or provide a formal presentation to a group on a topic relating to vocational rehabilitation.

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Rules Coordinator Name	Email Address