

# Agenda

## Rulemaking Advisory Committee

Workers' Compensation Division Rules

OAR chapter 436:

Division 105, Employer-at-Injury Program

Division 110, Preferred Worker Program

<b>Type of meeting:</b>	Rulemaking advisory committee
<b>Date, time, &amp; place:</b>	July 19, 2016, 9 a.m. to 4 p.m. Pacific Daylight Time Room 260, Labor and Industries Building, Salem, Oregon Teleconference: 213-787-0529   Access code, 9221262#
<b>Facilitators:</b>	Fred Bruyns, Workers' Compensation Division
<b>9:00 to 9:10</b>	Welcome and introductions; meeting objectives
<b>9:10 to 10:30</b>	Discussion of issues – <a href="#">see attached</a>
<b>10:30 to 10:45</b>	Break
<b>10:45 to Noon</b>	Discussion of issues continued
<b>Noon to 1:00</b>	Break for lunch hour
<b>1:05 to 2:30</b>	Discussion of issues continued
<b>2:30 to 2:45</b>	Break
<b>2:45 to 3:50</b>	Discussion of issues continued; request for related issues, discussion
<b>3:50 to 4:00</b>	Summing up   next steps   thank you!

### Attached:

- [Issues document for OAR 436-105](#)
- [Issues document for OAR 436-110](#)
- [Extra issue: Work Experience Program Participants, Apprentices and Trainees](#)

**OAR 436-105, Employer-at-Injury Program**  
**Issues Document**  
**For Stakeholder Advisory Committee 7/19/16**

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**ISSUE #1**

**Rule:** 436-105-0005(3), definition of “consumables”

**Issue:** The division gets questions about what is and is not reimbursable as a consumable. Including some examples may help clarify.

**Background:** Consumables are reimbursable if they support the functioning of tools or equipment utilized during transitional work. This definition is open to interpretation and has raised some questions. Examples of reimbursable consumables might include gas for a vehicle, ink for a printer, or nails for a nail gun. Items that are not considered consumable include extended warranties and auto insurance.

**Alternatives:**

- Amend the rule to include examples of reimbursable consumables
- Amend the rule to clarify that warranties are not consumables
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #2**

**Rule:** 436-105-0005(6), definition of “employer-at-injury”

**Issue:** A stakeholder has proposed changing the definition of “employer-at-injury” to “the organization that employed the worker at the time of injury or occupational disease.”

**Background:** The suggested change would remove from the definition the employer at aggravation or reopening, which may or may not be the original employer at injury. If an aggravation occurs while the worker is working for a different employer, that employer is not the responsible employer for the claim, nor is that employer entitled to information about the aggravation.

EAIP benefits are currently available to a different employer at aggravation or reopening. If this change is made that employer would no longer qualify for benefits. The division would like the committee's input on this proposal, including how often this situation comes up.

Also see the next two issues regarding the definition of "regular employment" and requests for reopening.

**Alternatives:**

- Amend the rule as proposed
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #3**

**Rule:** 436-105-0005(10), definition of "regular employment"

**Issue:** A stakeholder has proposed changing the definition of "regular employment" to "the employment the worker held at the time of injury or a request for reopening."

**Background:** The suggested change would remove from the definition employment at the time of aggravation. The division would like the committee's input on this proposal, considering the discussion regarding the prior issue and the definition of "employer-at-injury."

**Alternatives:**

- Amend the rule as proposed
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #4**

**Rule:** 436-105-0520, assistance available

**Issue:** A stakeholder has proposed that the introductory sentence to this rule be amended as follows:

The Employer-at-Injury Program may be used only once per worker per claim opening **or request for reopening**, for a non-disabling claim or a disabling claim.

**Background:** The stakeholder's reasoning is that when the employer-at-injury provides transitional work while a request for claim reopening is under review, the division allows EAIP benefits to be accessed even when the insurer later denies the request for reopening.

The division does allow benefits before a denial. We would like the committee's feedback on the impact of this proposed change.

**Alternatives:**

- Amend the rule as suggested
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #5**

**Rule:** 436-105-0005(12), definition of "skills building"

**Issue:** The division has identified two issues with the definition of "skills building":

- The second sentence is beyond the scope of a definition; and
- The term "course of instruction" has raised questions.

**Background:** Skills building was added to the rules in 2005 as a type of "transitional work"; transitional work must be within the employer's course and scope of trade or profession, unless the work is "skills building."

The second sentence of the definition of "skills building" ("When skills building is the transitional work, the worker must agree in writing to take the class or course of instruction.") may be more appropriately stated in 105-0520(3)(a), which describes the purchases that are reimbursable for skills building.

In addition, the term "course of instruction" is a vague term open to interpretation, such as whether it must be formal classroom training or can be more informal training.

**Alternatives:**

- Move the 2<sup>nd</sup> sentence to 105-0520(3)(a)
- Explain what is meant by “course of instruction”
- Otherwise clarify the definition of “skills building”
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #6**

**Rule:** 436-105-0005(15), definition of “work site”

**Issue:** The definitions of “work site” in the 105 and 110 rules are different.

**Background:** For purposes of the Preferred Worker Program, 436-110-0005(16) defines “worksite” as:

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

The requirement that the work site is already constructed in Oregon is not essential for purposes of the EAIP. Rather than have two different definitions of the same term, the division is considering removing the definition and explaining any specific requirements for a worksite in 436-105-0520(2).

**Alternatives:**

- Remove the definition of “work site” from 436-105-0005 and explain any specific requirements in 436-105-0520(2)
- Make the definitions of “worksite” in the 105 and 110 rules consistent
- No change

- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #7**

**Rule:** 436-105-0500, medical releases

**Issue:** Does the rule need to clarify who must issue a qualifying release?

**Background:** Subsection (4)(a) requires the insurer and employer to obtain a qualifying medical release from “the medical service provider.” Should it specify that it is the worker’s medical service provider? The division’s intention is to clarify the language, not to create a limit. Note that subsection (5)(a) does refer to “the medical release \*\*\* issued by the worker’s medical service provider \*\*\*.”

A similar issue was discussed during the 2005 rule revision, and the stakeholder advisory committee at that time recommended using “medical service provider” but not “attending physician.”

“Medical service provider” is defined in 436-010-0005(27) as “a person duly licensed to practice one or more of the healing arts.”

**Alternatives:**

- Revise subsection (4)(a) to refer to the worker’s medical service provider
- Revise subsection (4)(a) to refer to the worker’s attending physician, or a release with which the worker’s attending physician has concurred
- Make no change to subsection (4)(a)
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #8**

**Rule:** 436-105-0500(5), medical releases

**Issue:** It would be helpful for audit purposes if medical releases specified hourly limitations.

**Background:** Some releases just state “part-time work” but don’t specify a number of hours. In February 2016, the division revised the [“Return-to-Work Status” form \(3245\)](#) and it now includes hourly restrictions.

**Alternatives:**

- Add language requiring medical releases to specify hourly restrictions
- No change
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**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #9**

**Rule:** 436-105-0500(5)(c) and (6), medical releases

**Issue:** There is no clear end date for medical releases when the worker does not follow up with the provider.

**Background:** Subsection (5)(c) provides that a release must cover any period of time for which benefits are requested. Section (6) provides that a release remains in effect until another release is issued. If the worker never follows up with the provider, the initial release remains in effect and wage subsidy benefits continue. This is an issue more often in medical-only claims. If there is no follow-up, should the rules provide for an end date?

Time loss is not due and payable for any period of time not authorized by the attending physician or authorized nurse practitioner. Should the same be true for wage subsidy?

**Alternatives:**

- Amend the rule to provide that if the release is open-ended and the worker does not follow up, wage subsidy cannot exceed [14-21-30] days
- Amend the rule to provide that if the release specifies a timeframe or follow-up date, but the worker does not follow up, wage subsidy cannot exceed the number of days specified in the release
- Amend 105-0500(7)(f) to require the documentation of the transitional work to include the end date in addition to the start date. But see the next issue; if the transitional work documentation is prepared up-front, the end date may not be known.

- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #10**

**Rule:** 436-105-0500(4)(b), (7)(f), transitional work

**Issue:** The division has identified the following two issues related to transitional work requirements:

**Background:**

- Subsection (4)(b) requires the insurer and employer to identify a transitional work position. “Transitional work” is defined in 105-0005(13). The last sentence of the definition (“Transitional work must be within the employer’s course and scope of trade or profession, unless the work is ‘skills building.’”) is beyond the scope of a definition. Is 105-0500(4)(b) a better place to state the requirements for a transitional work position?
- Subsection (7)(f) requires the insurer to maintain documentation of the transitional work, including start date, wage and hours, and a description of the job duties. It makes sense that this documentation be created at the time the position is identified, or at least by the time reimbursement is requested. However, the division has seen documentation that appears to have been created for purposes of audit, long after the transitional work position ended.

See the alternative under the prior issue regarding including the end date of the transitional work position in the documentation; the end date may not be known at the time the position is identified.

**Alternatives:**

- Move substantive language regarding transition work from 105-0005(13) to 105-0500(4)(b)
- Amend the rule to include a time by which the transitional work position be documented
  - At the time the transition work position is identified
  - Before reimbursement is requested
  - During the EAIP period
  -
- Would the timeframe be more appropriately placed in (4)(b) or (7)(f), or both?

- Make no changes
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #11**

**Rule:** 436-105-0500(7)(c), payroll records

**Issue:** It would be helpful for audit purposes if payroll records included dates and hours worked for all wage subsidy periods, not only when the worker has hourly restrictions.

**Background:** Paragraph (7)(c)(A) requires payroll records to include dates and hours worked each day, if the worker has hourly restrictions. This information is helpful in all cases to determine the number of days worked and included in the wage subsidy period, and which days are paid leave.

Under [Senate Bill 1587 \(2016\)](#) (amending ORS 652.610), beginning Jan. 1, 2017, employers will be required to provide employees itemized pay statements that show, among other things: dates worked, rate of pay, gross wages, net wages, number of regular hours worked, and number of overtime hours worked.

**Alternatives:**

- Remove “if the worker has hourly restrictions” from the second sentence of (7)(c)(A)
- Amend the rule to require payroll records to include those items required by SB 1587
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #12**

**Rule:** 436-105-0512, end of eligibility

**Issue:** A new section should be added to 105-0512 stating that EAIP ends when preferred worker program benefits begin.

**Background:** This language is necessary to avoid overlap between the two programs, so the division/WBF is not reimbursing the same costs twice.

**Alternatives:**

- Add a section to 105-0512 stating that EAIP ends when preferred worker program benefits begin
- Make no change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #13**

**Rule:** 436-105-0520(1), wage subsidy

**Issue:** Stakeholders have asked the division to consider changing the EAIP wage subsidy reimbursement back to 50 percent of the worker's gross wages.

**Background:** The division reduced the wage subsidy from 50% to 45% of gross wages in mid-2013 as part of an overall strategy to reduce depletion of reserves in the Workers' Benefit Fund (WBF).

The division would like to hear from stakeholders on this issue. A reimbursement rate of 45% still provides a significant incentive to employers, and the department has not seen a drop in use of EAIP wage subsidy benefits since 2013.

**Alternatives:**

- Amend the rule to increase wage subsidy to 50%
- No change; keep wage subsidy at 45%
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**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #14**

**Rule:** 436-105-0520(1), paid leave

**Issue:** Should the term “paid leave” be defined or further explained?

**Background:** Subsections (b) and (c) provide that wage subsidy may not start or end with paid leave, and reimbursable paid leave cannot exceed the worker’s hourly restrictions. The meaning of the term “paid leave” seems clear; it’s time during which the worker was paid but not working. However, some insurers have argued that some types of leave that are paid, such as “paid time off,” shouldn’t be considered “paid leave” under the rules.

**Alternatives:**

- Add language to 105-0520(1) that further explains what is meant by “paid leave”
- Add a definition of “paid leave” to 105-0005
- Re-word 436-105-0520(1) to remove the term “paid leave.” For example:

(1) \* \* \* Wage subsidy benefits are subject to the following conditions:  
\* \* \* \* \*

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

**(b) A wage subsidy must start and end on days on which the worker worked;**

**(c) If the worker has hourly restrictions, reimbursement for time during which the worker was paid but not working-reimbursable paid leave must be limited up to the maximum number of hours of the worker’s hourly restrictions. Paid time leave exceeding the worker’s hourly restrictions is not subject to reimbursement;**

- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #15**

**Rule:** 436-105-0520, worksite modification items, tools, and equipment

**Issue:** Should the rules specify a timeframe in which worksite modification items, tools, and equipment must be purchased, delivered, or used, in relation to when the worker returns to regular work?

**Background:** The rule currently requires that worksite modifications must be ordered during the EAIP. The division has seen cases in which the employer ordered equipment knowing the worker would return to regular work before using it for transitional work. This is not the intent of the program. The division wants to be cautious, however, not to penalize an employer who

orders an item in good faith, but the worker never uses it for transitional work (e.g., if the item is on backorder).

Prior to 12/1/07, 105-0520(2)(d) provided:

Modifications must be provided for and used by the worker during the Employer-at-Injury Program, except under the following conditions:

- (A) The modification equipment had been ordered during the Employer-at-Injury Program, and documentation is provided that the equivalent modification item(s) were loaned to and used by the worker while the worker and employer were eligible for the Employer-at-Injury Program; or
- (B) The employer can demonstrate that the modification(s) were provided in good faith and the worker refused to return to work;

**Alternatives:**

- Amend the rule to add a timeframe for purchasing, delivering, or using EAIP items
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #16**

**Rule:** 436-105-0520, warranties

**Issue:** A stakeholder has suggested that the rules clarify whether equipment warranties are eligible for reimbursement.

**Background:** The division does not currently reimburse for warranties or extended service plans, which do not address the worker's restrictions, do not support the function of a tool, and likely cover a period of time well beyond the end of the transitional work position. However, the division is open to discussing the issue. Does it make a difference what the item is? Does it depend on the terms of the warranty or whether there is a deductible?

**Alternatives:**

- Amend the rule to clarify whether equipment warranties or extended service plans are reimbursable, in what circumstances
- No change

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**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #17**

**Rule:** 436-105-0540(3), reimbursement requests

**Issue:** The requirement that the insurer date stamp documents should be revised to accommodate electronic records of receipt.

**Background:** Section (3) requires the insurer to date stamp each reimbursement request document with the receipt date, and to receive all required documentation within one year from the end of the EAIP in order to qualify for reimbursement. The division has revised rules in other areas to allow flexibility as more companies go paperless.

**Alternatives:**

- Amend rule to allow for electronic record of receipt
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #18**

**Rule:** 436-105-0540, reimbursement requests

**Issue:** Sections (5), (6), and (7) regarding minimum requests, subsequent requests, amended requests, and associated administrative costs seem redundant and confusing.

**Background:** These sections could be clarified to state more clearly that the first request for reimbursement must be for more than \$100, and subsequent requests can be less than \$100 but reimbursement for those requests will not include an administrative cost.

**Alternatives:**

- Amend the rule as suggested

- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #19**

**Rule:** 436-105-0550(3), audits

**Issue:** The division is considering changing the language to provide that if conflicting documentation exists and there is no clear preponderance, reimbursement will be disallowed.

**Background:** The documentation is clear in most reimbursement requests, so this change is not expected to have a significant impact.

**Alternatives:**

- Revise the language regarding conflicting documentation
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #20**

**Rule:** [Bulletin 260](#) / [Form 2360](#), Employer-at-Injury Program Reimbursement Request Form

**Issue:** The bulletin and form will need to be reviewed for revisions as a result of rule changes.

**Background:** This issue is a placeholder. Ideally changes to all related materials should be coordinated so they are published at the same time.

## **Housekeeping**

Throughout the rules

- Make grammar and format corrections
- Remove unnecessary language such as “as defined in OAR 436-105-0005”
- Make edits for internal consistency

105-0005(2) and (14) – The definitions and use of the terms “client” and “worker leasing company” should be consistent between the 105 and 110 rules

105-0008(2) – Update language regarding requests for reconsideration submitted by facsimile to be consistent with other rules in chapter 436

105-0500(5) – Clarify: “For purposes of the [EAIP], medical releases **are required and** must meet the following criteria:”

105-0500(7)(c) – Reorganize/renumber paragraphs (C) and (D); they do not flow from the introductory language in (c)

105-0510, 105-0511, 105-0540 – Need to add introductory statements

105-0512(4) – Remove language; unnecessary

105-0520

- First sentence of opening paragraph – remove “for a nondisabling claim or a disabling claim”; unnecessary
- Section (4) should be subsection (3)(c)
- Sections (5) and (6) don’t fit the same format as sections (1) thru (4)

105-0540(2) – Clarify, consistent with practice: “The insurer is entitled to a program administrative cost of \$120.00 for the first **approved** reimbursement request of an Employer-at-Injury Program.”

105-0540(3) – Clarify that the insurer must receive from the employer all required documentation within one year

105-0540(8) – Reword the 2<sup>nd</sup> sentence to clarify: “The insurer has 60 days from the date the insurer receives the **returned** reimbursement request **from the division**, or one year \*\*\*, to make the corrections \*\*\*.”

105-0540(14) – Add cross-references to the definitions of “preferred worker” and “premium exemption” in OAR 436-110

105-0550(3) – Change “utilize” to “use”

**OAR 436-110, Preferred Worker Program**  
**Issues Document**  
**For Stakeholder Advisory Committee 7/19/16**

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**ISSUE #1**

**Rule:** 436-110-0005(16), definition of “worksite”

**Issue:** The definitions of “worksite” in the 105 and 110 rules are different.

**Background:** For purposes of the Employer-at-Injury Program, 436-105-0005(15) defines “work site” as:

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

For PWP, the worksite must already exist in Oregon. Rather than have two different definitions of the same term, the division is considering removing the definition and explaining any specific requirements for a worksite in 436-110-0350, Worksite Modification – General Provisions.

**Alternatives:**

- Remove the definition of “worksite” from 436-110-0005 and explain any specific requirements in 436-110-0350(1)
- Make the definitions of “worksite” in the 105 and 110 rules consistent
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #2**

**Rule:** 436-110-0007, reconsideration/appeal process

**Issue:** The process for reconsideration and director review is difficult to understand.

**Background:** This rule is confusing, and the process for reconsideration and director review is not clear to parties or division staff. Also, the rule refers to the administrator, director, and division, and the terminology should be consistent.

**Alternatives:**

- Clarify the rule regarding reconsideration and director review
- No change
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**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #3**

**Rule:** 436-110-0240(5)(c), preferred worker information

**Issue:** Many workers who enter into a claim disposition agreement (CDA) before their claim is closed do not realize they may still be eligible for the preferred worker program, and permanent restrictions are needed to determine eligibility.

**Background:** A worker may not waive eligibility for preferred worker status in a CDA, under ORS 656.622(4)(b). When the parties enter into a CDA prior to claim closure, the insurer still must process the claim until permanent restrictions are known. The requirement to provide information when the parties enter into a pre-closure CDA is not clear.

**Alternatives:**

- Revise the rule to clarify the requirement for reporting preferred worker information to the division when a CDA is approved before claim closure
- Add language stating the insurer's obligation to continue to process a claim after a pre-closure CDA for PWP benefits
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

#### **ISSUE #4**

**Rule:** 436-110-0290(1)(c), 436-110-0325(4), premium exemption

**Issue:** The requirement that the employer notify the insurer within 90 days of the date of eligibility or hire has created issues in the reimbursement process. The division is considering changing the rule to require the insurer to notify the division within seven days of activating premium exemption.

**Background:** Currently the employer is required to notify its insurer within 90 days of hiring a preferred worker in order to qualify for premium exemption. Could this requirement have the unintended effect of limiting the statute, which provides for premium exemption during the first three years from the date of hire, regardless of when the employer notified the insurer?

While some workers may not want to disclose to the employer that they are a preferred worker, the benefits are intended to be an incentive to hire or retain the worker.

#### **Alternatives:**

- Amend the rule to eliminate the requirement for the employer to notify its insurer within 90 days
- Amend the rule to provide for division approval of premium exemption
- No change
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#### **Fiscal Impacts, including cost of compliance for small business:**

#### **ISSUE #5**

**Rule:** 436-110-0330(2)(a), claim cost reimbursement

**Issue:** The timeframe for submitting requests for reimbursement is not clear.

**Background:** The current language starting the timeframe at the end of the quarter within which payment was made seems unnecessarily confusing.

In 1990, the rules provided that requests for reimbursement be made within one year of payment, and the department would reimburse on a quarterly basis. In 1997, the rule was changed to require requests be made within one year of the quarter within which payment was made. The language was changed in 2009 to require requests to be made within one year of the end of the quarter within which payment was made. The rulemaking records state this change was to

“provide a more specific time limit for requesting claims cost reimbursement.” However, it is not a clear timeframe.

**Alternatives:**

- Amend the rule to require requests to be made within one year of when the payment was made
- Amend the rule to require requests to be made within 15 months of when the payment was made
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #6**

**Rule:** 436-110-0330, claim cost reimbursement

**Issue:** Paragraph (2)(c)(B) requires the insurer to include a “payment certification statement,” but it is not clear what that is, or why the division needs it.

**Background:** The Preferred Worker Program [Quarterly Claim Cost Reimbursement Request form](#) (Form 3014) contains the following statement over the insurer’s signature line:

I certify that:

- 1) The costs listed are reimbursable claim costs under Oregon Administrative Rule 436-110-0330. (Note: The Workers’ Compensation Division will determine the appropriate administrative cost factor, as published in Bulletin 316, and apply it to the reimbursement.)
- 2) The claim costs reimbursed by the Preferred Worker Program are not and will not be included in the data that will affect employer rates or dividend eligibility.
- 3) The payments reported have been made in the amounts indicated and have not been previously requested. Reimbursement is requested in the amount of \_\_\_\_\_.

**Alternatives:**

- Revise the rule to clarify the requirement for a “payment certification statement”
- Revise the rule to refer to the reimbursement request form

- No change
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**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #7**

**Rule:** 436-110-0330(6), claim cost reimbursement, settlements

**Issue:** The requirements for reimbursement of settlement amounts need to be updated and clarified.

**Background:**

- Paragraph (6)(c)(A) requires the parties to submit the original proposed disposition with appropriate signature lines for division and WCB/ALJ approval. The division does not need the original, and the board and ALJs no longer sign all settlements, only claim disposition agreements.
- Subsections (6)(a) and (6)(c) use the term “disposition,” but section (6) applies to all types of settlements, not just claim disposition agreements.

**Alternatives:**

- Revise (6)(c)(A) to remove the requirement for the original proposed disposition
- Revise (6)(c)(A) to remove the requirement for appropriate signature lines for WCB or ALJ approval
- Revise (6) to replace “disposition” with “agreement,” “settlement,” “stipulation,” or a combination of terms
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #8**

**Rule:** 436-110-0335 and 436-110-0337, wage subsidy

**Issues:** The division is considering the following revisions related to wage subsidy:

- Allow unlimited use of wage subsidy with a maximum dollar amount; and
- Limit wage subsidy to one use per employer, instead of one use per job.

**Background:** Some workers need more than the current two uses of wage subsidy to successfully return to work. An example would be if the first job doesn't turn out to be a good fit for the worker. The maximum dollar amount could be indexed to the average weekly wage.

The division has seen cases in which the employer changes the job title after six months to extend reimbursement.

**Alternatives:**

- Revise the rule to allow unlimited use of wage subsidy, with a maximum dollar amount
- Revise the rule to limit wage subsidy to one use per employer
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

## **ISSUE #9**

**Rule:** 436-110-0345, 436-110-0346, and 436-110-0347, employment purchases

**Issue:** The rules on employment purchases have not been updated in several years, and the division has identified the following updates to reflect the current economy and recent workforce trends.

**Background:**

- Allow unlimited use, with a per-use cap and a maximum dollar amount per category. Should the number of allowed uses be different depending on the category?
- Tie maximum expenditure limits to the cost of living.
- Increase the per-use cap for tuition in 110-0345(2)(a) from \$1,000 to \$2,000. Should the maximum expenditure for tuition not be per-use?
- Increase the per-use cap for lodging in 110-0345(2)(b) from \$500 to \$1,000.

- Clarify that the “combined period of one month” in 110-0345(2)(b) for lodging, meals, and mileage means within one month’s period of time, not combined.
- Increase the per-use cap for clothing in 110-0345(2)(d) from \$400 to \$500, with unlimited use up to \$1,000.
- Add a new category to 110-0345(2) for transportation-related purchases, excluding vehicles, to enable the worker to get to work in the short-term, such as a bus pass, gas, insurance, or car repairs (e.g., new tires). These types of expenses are currently treated as “miscellaneous” under 110-0345(2)(j). The purpose is to help the worker get to a job, not to help maintain a vehicle. A reasonable cap may be \$1,000 within 90 days of hire.
- Amend the language in 110-0345(5) as follows, to reflect current practice: “The division will provide payment but will not otherwise assume responsibility for employment purchases.” The division may make direct payment, but has no liability after purchase.
- Clarify in 110-0347(4) that, although a request may be made “prior to employment,” there must at least be a job offer and start date.
- The timeframe in 110-0347(4)(a) of three years after the date of hire seems too long for one job.

**Alternatives:**

- Make the changes suggested
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #10**

**Rule:** 436-110-0345(2)(i), placement assistance

**Issue:** Placement assistance services can be very helpful for a worker, but the current rule and mechanism for payment is a disincentive for counselors to provide the services. The division would like to provide an incentive for counselors to provide placement services, increase the use of placement services, and increase the number of successful placements.

**Background:** Placement assistance is a little-used category. The requirement that services result in employment of at least 90 days makes it difficult for a counselor to get paid for services they've already provided. The purpose of services should be to help a worker get a job. Counselors spend a lot of time providing services before the worker is ready to apply for a job, and if the worker does get a job, the counselor has little control over whether the worker is able to keep it.

- From 2011-2015 there were 46 requests for placement assistance
- Less than 1% of preferred workers use placement assistance
- Only a handful (3-8) of 162 certified vocational counselors have provided placement assistance
- Average time spent preparing a worker for job search:
  - Intake – 2 hours (work history, job skills, educational, criminal background, etc.)
  - Resume – 1.5 hours (draft resume, finalize resume, multiple resumes)
  - Interview skills – 1 hour (mock interview, dress, do's and don'ts, etc.)
  - Resource development – 1 hour (teach worker about PWP, OVRS, Goodwill, i-match and other community resources available)
  - Online applications – 2-3 hours (assist in filling out online applications, create an online application template)
  - I-match profile – 2 hours (assist worker in creating profile)
  - Job search skills coaching – 1 hour (teaching workers how to find jobs online)
  - Phone calls/follow ups – 1 hour (making employer contacts for worker)
  - Total – 11 to 14 hours at \$85/hour = \$935-\$1190

The division has considered the following options for rule changes, and would like the committee's feedback on these and any other ideas:

- Define placement assistance:
  - “Services to provide the worker with skills to find employment, including but not be limited to: intake, resume writing, interview skills, resource development, online application development, i-match profile assistance, job search skills coaching, and employer contacts.”
- Pay for a certain number of hours before the worker finds a job
- Pay at half the billable hourly rate (\$42.50) for services
- Include payment for travel (1/2 billable hourly rate plus mileage reimbursement)
- Allow one-time use of up to \$1000 for up-front services
- Allow the category to be used twice

- Revise or remove the requirement that the worker retain employment for 90 days
- Pay a portion (\$200-500) up-front and the rest (\$200-500) after the worker is employed for 30/60/90 days
- Pay a post-placement “bonus”

**Alternatives:**

- Revise the rule regarding placement assistance to create incentives for counselors to provide the services
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #11**

**Rule:** 436-110-0350, 436-110-0351, 436-110-0352, worksite modification

**Issue:** The amounts allowed for worksite modifications have not changed in several years and need to be updated. In addition to the higher cost of living, workers today change employers more often than they used to. The division is considering the following changes:

**Background:**

- Increase the maximum in 110-0350(2)(c) from \$25,000 per job to \$50,000 per eligibility, with unlimited uses but a per-use cap of \$35,000.

Corresponding language in 110-0351(2) will also need to be updated, or possibly removed as redundant.

- Increase the amount in 110-0350(2)(d) for modifications to prevent further injury or exacerbation from \$1,000 to \$2,500.
- For vehicle modifications under 110-0350(2)(g), require the worker to have the applicable classifications on the worker’s driver license.
- Increase the limit on the cost of rental items and consultative services in 110-0350(2)(1) from \$3,500 each to \$5,000 each.

- Remove the last sentence of section 110-0350(1); it appears to repeat what is stated in (2)(f).
- Clarify the language in 110-0350(6), as the division does purchase worksite modifications items directly: “The division will provide payment but will not otherwise assume responsibility for worksite modifications.”
- Revise the language in 110-0352(3) to be consistent with proposed changes to wage subsidy – unlimited use, once per employer.

**Alternatives:**

- Revise the rule as suggested above
- No change
- 

**Fiscal Impacts, including cost of compliance for small business:**

**ISSUE #12**

**Rule:** [Bulletin 189](#)

- Form [2190](#), Preferred Worker Wage Subsidy Agreement
- Form [2350](#), Preferred Worker Employment Purchase Agreement
- Form [2968](#), Preferred Worker Program Wage Subsidy Reimbursement Request
- Form [3014](#), Preferred Worker Program Quarterly Claim Cost Reimbursement Request
- Form [3293](#), Preferred Worker Moving Assistance Agreement
- Form [4122](#), Preferred Worker Worksite Creation Agreement
- Form [4875](#), Preferred Worker Placement Assistance Agreement
- Form [4903](#), Preferred Worker Job Offer Letter

**Issue:** The bulletin and forms will need to be reviewed for revisions as a result of rule changes.

**Background:** This issue is a placeholder. Ideally changes to all related materials should be coordinated so they are all published at the same time.

**Fiscal Impacts, including cost of compliance for small business:**

## Housekeeping

Throughout the rules

- Make grammar and format corrections
- Remove unnecessary language such as “as defined in \*\*\*”
- Make edits for internal consistency

436-110-0005(2) – The definitions and use of the terms “client” and “worker leasing company” should be consistent between the 105 and 110 rules

436-110-0005(10) – Change “Class III” to “Class 3” and refer to 436-035-0390

436-110-0007(2) – Update language regarding requests for reconsideration submitted by facsimile to be consistent with other rules in chapter 436

436-110-0240(3) and (4) – Update e-mail address to @oregon.gov. Remove references to Medford.

436-110-0310(2)(a) – Include reference to ORS sections for Injured Inmate Law

436-110-0310(6) – Remove “he/she”

436-110-0330(2)(b) – Add references to Bulletin 189 (also to 110-0345(2), 110-0345(7), 110-0346(2))

436-110-0330(4) – Remove the word “physical”

436-110-0335(5) – Change “by the following method” to “as follows”; remove “First” from (a)

436-110-0335 and -0336 – Punctuation

436-110-0336(3) – Re-word as follows: “The completed and signed job offer ~~must accompany the request as required in OAR 436-110-0290(4)~~ **must accompany the request for wage subsidy benefits**, unless it was already submitted with another request.”

436-110-0336(2) and (3) – (3) refers to -0290(4); (2) just refers to -0290; should (2) refer to -0290(2) and (3)?

436-110-0337(1) – Add “submit the agreement to the division **for approval**”

436-110-0345(2)(e) – Reference Moving Assistance Agreement, form 3293

436-110-0347 – Renumber so the first sentence becomes (1); (1)-(3) become (a)-(c); and (4) becomes (2)

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436-110-0350(1) – Remove “in Oregon,” it’s already covered in the definition of “worksite” in 110-0005

436-110-0350(8) – Change references to “reemployment assistance consultant” to “worksite modification consultant”

436-110-0351(3) and 436-110-0352(1) – This language can be removed from these two rules and stated in general provisions in -0350

436-110-0352(4) – Remove the entire section

# **OAR chapter 436**

## **Work Experience Program Participants, Apprentices and Trainees**

For 105, 110, and 120 Stakeholder Advisory Committees  
7/19/16 and 7/27/16

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**Rule:** Chapter 436, divisions 105, 110, 120

**Issue:** There are no rules in chapter 436 regarding how to determine eligibility and calculate benefits for injured individuals covered under:

- ORS 656.033, Participants in work experience or school directed professional training programs
- ORS 656.046, Persons in college work experience and professional education programs
- ORS 656.135, Deaf school work experience trainees
- ORS 656.138, Apprentices, trainees participating in related instruction classes

**Background:** Individuals covered under these sections who are injured while participating in the training program are entitled to workers' compensation benefits under ORS chapter 656. Individuals covered under ORS 656.033 and 656.046 are not entitled to time loss benefits, but the individuals are otherwise entitled to medical services, permanent disability, return to work, and vocational assistance. The filing of a claim for benefits is the exclusive remedy of the individual and any beneficiaries.

We do not know how many claims arise in these situations. However, for those claims that are filed, there are no rules to provide guidance for determining eligibility for and the amount of benefits. The actual benefits provided to the individuals may not be consistent. There may be some rules that inadvertently present roadblocks to these individuals being found eligible for the benefits to which they are otherwise entitled.

Issues specific to the 105, 110, and 120 rules include how to determine wage at injury, employer at injury, and job at injury. The rules related to claims processing (060) and PPD (030 and 035) may also be affected; the division will seek input from future advisory committees specific to those rules.

We would like your feedback related to this issue, including:

- Any direct experience you have with claims covered under one of these sections.
- What would be most helpful to provide guidance to parties in these claims?
- Should language be added to the 105, 110, or 120 rules for how to determine eligibility for EAIP, PWP, and vocational assistance benefits?

- If so, what elements should the rule include?
- Are there obstacles in any of the rules to these individuals and their “employers” being able to access the benefits they are entitled to by statute?