



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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August 20, 2007

Proposed Changes to Workers' Compensation Rules

The 2007 Oregon Legislature passed a number of bills affecting workers' compensation laws. The Department of Consumer and Business Services, Workers' Compensation Division proposes changes to OAR chapter 436 to make these rules consistent with the revised laws. In addition, the department proposes changes to make the rules easier to understand, to streamline regulations, and to expand return-to-work incentives for the Employer-at-Injury Program and Preferred Worker Program.

Please review the attached documents for more information about proposed changes and possible fiscal impacts.

The department welcomes public comment on proposed changes and has scheduled a public hearing.

- When is the hearing?** September 24, 2007, 2:00 p.m.
- Where is the hearing?** Labor & Industries Building
350 Winter Street NE, Room 260 (2nd Floor),
Salem, Oregon 97301
- How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Email - fred.h.bruyns@state.or.us
Phone - (503) 947-7717; Fax - (503) 947-7581
The closing date for written comments is September 27, 2007.
- How can I get copies of the proposed rules?**
On the Workers' Compensation Division's Web site –
<http://www.cbs.state.or.us/external/wcd/policy/rules/rules.html#proprules>
Or call (503) 947-7627 to get free paper copies
- Questions?** Contact Fred Bruyns, (503) 947-7717.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
 A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services (DCBS),
 Workers' Compensation Division
 Agency and Division

OAR CHAPTER 436
 Administrative Rules Chapter Number

Fred Bruyns	PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879	(503) 947- 7717 Fax (503) 947-7581
Rules Coordinator	Address	Telephone

RULE CAPTION

Proposed rules affecting workers' compensation insurance, claims processing, medical treatment, and return-to-work assistance.

September 24, 2007	2:00 p.m.*	Room 260 (2 nd Floor, Labor & Industries Building) 350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***NOTE: The hearing will begin at 2:00 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through September 27, 2007.**

**The site of the hearing is accessible for individuals with mobility impairments.
 Auxiliary aids for persons with disabilities are available upon advance request.**

RULEMAKING ACTION

ADOPT: OAR 436-105-0511; 436-105-0512; 436-160-0400; 436-160-0410; 436-160-0420; 436-160-0430

AMEND: OAR 436-040; 436-105; 436-110; 436-120; and

436-009-0005	436-015-0005	436-030-0175	436-050-0100	436-060-0008	436-160-0004
436-009-0010	436-015-0030	436-030-0185	436-050-0175	436-060-0010	436-160-0005
436-009-0020	436-015-0040	436-035-0005	436-050-0200	436-060-0015	436-160-0006
436-009-0030	436-015-0120	436-035-0110	436-050-0400	436-060-0018	436-160-0010
436-009-0040	436-030-0007	436-035-0350	436-050-0410	436-060-0055	436-160-0020
436-010-0005	436-030-0020	436-035-0390	436-050-0420	436-060-0060	436-160-0030
436-010-0210	436-030-0035	436-035-0420	436-050-0440	436-060-0140	436-160-0040
436-010-0220	436-030-0115	436-035-0500	436-050-0450	436-060-0147	436-160-0050
436-010-0230	436-030-0135	436-045-0008	436-050-0455	436-060-0150	436-160-0060
436-010-0240	436-030-0145	436-045-0030	436-050-0460	436-160-0001	436-160-0070
436-010-0265	436-030-0155	436-050-0003	436-050-0470	436-160-0002	436-160-0080
436-010-0280	436-030-0165	436-050-0005	436-050-0480	436-160-0003	436-160-0090

REPEAL: 436-030-0440; 436-030-0450; 436-030-0460; 436-030-0550; 436-030-0570;
 436-110-0326; 436-110-0327; 436-110-0380; 436-120-0730

ORS 656.726(4)
 Stat. Auth.

Other Authority
 ORS chapter 656, as amended by enrolled: Senate Bill (SB) 83 – Oregon Laws (OL) 2007, ch. 70; SB 147 - OL 2007, ch. 86; SB 253 - OL 2007, ch. 491; SB 504 - OL 2007, ch. 505; SB 563 - OL 2007, ch. 423; SB 762 - OL 2007, ch. 518; House Bill (HB) 2218 - OL 270; HB 2756 - OL 2007, ch. 252; HB 2783 - OL 2007, ch. 656; HB 2943 - OL 2007, ch. 300

Stats. Implemented

RULE SUMMARY

Amendments to implement changes in the Workers' Compensation Law, including:

- Replacing the term "Handicapped Workers" with "Workers with Disabilities" (SB 83);
- Updating name of Board of Medical Examiners for the State of Oregon to "Oregon Medical Board" (SB 147);

- Including “administrative law judge” as a person who may approve or disapprove a claims disposition agreement (SB 253);
- Describing restrictions affecting emergency room physicians’ rights to be attending physicians and authorize temporary disability benefits (SB 504);
- Deleting requirement that managed care organizations send to the director copies of all new or amended treatment standards, protocols, and guidelines for the director’s review and approval; deleting related definitions (SB 563);
- Explaining how DCBS will publish the maximum reimbursable amount for medical services for non-disabling claims (SB 762);
- Amending penalty provisions affecting managed care organizations; deleting procedures for temporary rule promulgation to address disability in individual claims (when medical conditions are not addressed by current standards), and addressing such conditions in the director’s order on reconsideration, and providing that penalties will not be assessed if an increase in compensation results from such an order; describing how insurers must process requests for a lump sum payments of permanent partial disability awards (HB 2218);
- Describing the authority and limitations for several types of providers - chiropractors, naturopaths, podiatrists, and physician assistants - when acting as attending physicians (HB 2756);
- Referring to ORS 656.427 regarding time frames for termination of guaranty contracts; defining “premium” (HB 2783);
- Adopting standards of professional conduct for health care providers who perform independent medical examinations, which apply if the provider’s professional regulatory board has not adopted standards for performing such examinations (HB 2943);

General amendments to OAR chapter 436, including:

- Using plain language to add clarity to a number of rules;
- Shortening some rules by removing unnecessary descriptions of DCBS procedures;

Amendments to OAR 436, 009, “Oregon Medical Fee and Payment Rules” and OAR 436-160, “Electronic Data Interchange” (EDI), to improve the quality of medical billing data for use by DCBS and its customers, including:

- Requiring hospitals and other health care providers to include sufficient data on their billings so insurers and DCBS can identify the providers;
- Requiring insurers to report medical billing data to DCBS using standards for electronic data interchange adopted by the International Association of Industrial Accident Boards and Commissions;
- Listing the data elements reportable to DCBS; testing procedures for EDI; phase-in dates for EDI and when insurers and self-insured employers are subject; procedures for requesting deferral of EDI reporting;

Amendment to OAR 436-010, “Medical Services,” to remove obsolete medical utilization guideline:

- Regarding frequency of treatment in OAR 436-010-0230;

Amendments to OAR 436-030, “Claim Closure and Reconsideration,” to eliminate conflicts between statute and rules, streamline processing, delete obsolete rules, and reduce litigation, including:

- Restricting reconsideration of claim closure to issues raised by the parties plus requirements under ORS 656.268(1);
- Requiring insurers to submit documents related to reconsideration of claim closure in chronological order;
- Removing the limitation on attorney fees from OAR 436-030-0175(4);
- Deleting obsolete rules OAR 436-030-0440, 0450; 0460, 0550, and 0570; the relevant subject matter from these rules has been addressed in other rules in OAR 436-030 and 436-035 (since approximately 1988), but the rules have remained in the Oregon Administrative Rules published by the Secretary of State;

Amendments to OAR 436-035, “Disability Rating Standards,” to clarify or correct certain provisions, and to provide for rating disability for a medical condition not currently addressed by the standards, including:

- Clarifying the definition of “direct medical sequela”;
- Correcting the description of impairment involving angulation or malalignment of the humerus;
- Clarifying how to rate impairment for surgery involving one or more discs or vertebrae;
- Eliminating provision that if a value of impairment is determined for damage to the brain, no additional value for speech or psychiatric impairment is allowed;
- Provide standards for rating impairment for vaginal prolapse;

Amendments to OAR 436-050, “Employer/Insurer Coverage Responsibility,” to clarify certain provisions and ensure appropriate oversight of worker leasing company licensing and practices, including:

- Clarifying time frames and process for cancellation of self-insurance;
- Revising regulations affecting worker leasing companies, including:
 - Relevant definitions;
 - The application and license renewal process;
 - Reporting and record-keeping;
 - Grounds for disqualification, suspension of license, and revocation of license by the director;
 - Appeal rights for persons refused approval or renewal of a worker leasing license;
 - Reapplication following disqualification for, or revocation of, license;
 - Continuation of a disqualification, suspension, or revocation of a worker leasing license applicable to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company’s assets to another person or controlling person;
 - Penalties under ORS 656.990;

Amendments to OAR 436-060, “Claims Administration,” to eliminate inconsistencies in DCBS rules and clarify or streamline certain provisions, including:

- Revising time frame for employers’ first aid record-keeping (to be consistent with Oregon OSHA requirements);
- Reducing the documentation a worker must submit when appealing an insurer’s refusal to reclassify a claim;
- Clarifying conditions under which the insurer must notify health care providers when a workers’ compensation claim is denied or partially denied;

Amendments to OAR 436-105, “Employer-at-Injury Program” (EAIP), to promote increased use of the EAIP and therefore earlier return to work of injured workers with their employers at injury, by streamlining program administration, setting an appropriate fee payable to insurers for administration of the program, and expanding some incentives, including:

- Providing that a medical release remains in effect until another medical release is issued by the worker’s medical service provider;
- Providing that a worker is eligible for EAIP services while the claim is “deferred” (prior to acceptance or denial);
- Providing insurers greater discretion to determine appropriate EAIP worksite modifications and EAIP purchases;
- Providing insurers greater discretion to determine what is appropriate training; eliminating the requirement that EAIP purchases for training are limited to “accredited” or “licensed” training or courses;
- Increasing maximum reimbursable amount for EAIP purchases for tools and equipment;
- Allowing insurers to submit more than one reimbursement request per EAIP;
- Stating the administrative fee payable to the insurer for its administration of EAIP services (formerly not prescribed by rule);

Amendments to OAR 436-110, “Preferred Worker Program” (PWP) to promote increased use of the PWP and therefore facilitate the return to work of injured workers and improve return-to-work outcomes (wages, tenure, etc.), by streamlining program administration, creating new PWP incentives, and expanding some existing incentives, including:

- Redefining and simplifying “date of hire” and “reimbursable wages”;
- Shortening and simplifying the wording that must appear on notices to workers about potential PWP benefits;
- Issuing PWP identification cards with no expiration date - workers could offer the initial and any subsequent employers three full years of premium exemption and claim cost reimbursement;
- Eliminating the requirement that a modification of regular work be “substantial” in order for a worker to be eligible for PWP benefits other than Worksite Modification;
- Removing the restriction that Wage Subsidies may not be combined with subsidies from other sources, with the exception of subsidies under OAR 436-120;
- Revising the name of “Obtained Employment Purchases” to “Employment Purchases”;
- Allowing Employment Purchases while a worker is receiving vocational assistance under OAR 436-120;
- Allowing replacement of Employment Purchases;

- Increasing the maximum expenditure for an Employment Purchase for tools and equipment;
- Providing Employment Purchases needed to create a new worksite;
- Creating a miscellaneous category of Employment Purchase that may be used to help a worker find, accept, or retain employment;
- Allowing a second use of Wage Subsidy and a second use of each category of Employment Purchase for a different job with the same employer (formerly two wage subsidies could not be used with the same employer);
- Eliminating forms currently required for Worksite Modifications costing \$2,500 or less;
- Eliminating the general requirement for competitive bids for Worksite Modification;

Amendments to OAR 436-120, “Vocational Assistance to Injured Workers,” to improve sufficiency of certain notices, clarify time frames for submitting information to DCBS, streamline return-to-work plan development process, clarify or define certain provisions, and delete obsolete provisions, including:

- Describing how the Workers’ Compensation Division will determine the timeliness of any document that must be sent to the division in vocational matters;
- Requiring that notices of eligibility for vocational assistance, training, or direct employment services explain the rights of the worker to request a return-to-work plan conference;
- Requiring that notice must be in writing when an insurer notifies a worker that an eligibility determination is postponed while awaiting information about permanent restrictions;
- Requiring that if an insurer ends a worker’s eligibility because lack of suitable employment is not due to the limitations caused by the injury, the insurer must have obtained new information that did not exist or that the insurer could not have discovered with reasonable effort at the time the insurer determined eligibility;
- Including among the reasons a worker would be ineligible for vocational assistance or for which eligibility would end, that the worker is unavailable for vocational assistance due to short-term incarceration;
- Eliminating all time frames related to return-to-work plan development except that a plan must be approved within 45 days (direct employment) or 90 days (training) under OAR 436-120-0500(1) & (2);
- Updating the vocational fee schedule (consistent with changes in state average weekly wage and Bulletin 124);
- Eliminating the requirement that insurers request administrative approval for vocational services when the insurer is entitled to claims cost reimbursement under OAR 436-110;
- Repealing the rule: “Reimbursement of Vocational Assistance Costs for Pre-1986 Injuries”; and
- Defining “show-cause hearing” for the purposes of OAR 436-120-0915(3).

Request for public comment: The Workers’ Compensation Division requests public comment on whether other options should be considered for achieving the rules’ substantive goals while reducing the negative economic impact of the rules on business.

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers’ Compensation Division’s Web site:

<http://wcd.oregon.gov/policy/rules/rules.html#proprules>

or from WCD Publications, 503-947-7627 or fax 503-947-7630.

September 27, 2007
Last Day for Public Comment

John L. Shilts
Authorized Signer and Date

8-14-07

John L. Shilts, Administrator, Workers’ Compensation Division
Printed name

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services,
Workers' Compensation Division
Agency and Division

OAR CHAPTER 436
Administrative Rules Chapter Number

In the Matter of)
The Amendment of OAR:)
436-009, Oregon Medical Fee and Payment Rules)
436-010, Medical Services)
436-015, Managed Care Organizations)
436-030, Claim Closure and Reconsideration)
436-035, Disability Rating Standards)
436-040, Workers with Disabilities Program)
436-045, Reopened Claims Program)
436-050, Employer/Insurer Coverage Responsibility)
436-060, Claims Administration)
436-105, Employer-at-Injury Program)
436-110, Preferred Worker Program)
436-120, Vocational Assistance to Injured Workers)
436-160, Electronic Data Interchange)

Rule Caption:

Proposed rules affecting workers' compensation insurance, claims processing, medical treatment, and return-to-work assistance.

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS chapter 656, as amended by enrolled: Senate Bill (SB) 83 – Oregon Laws (OL) 2007, ch. 70; SB 147 - OL 2007, ch. 86; SB 253 - OL 2007, ch. 491; SB 504 - OL 2007, ch. 505; SB 563 - OL 2007, ch. 423; SB 762 - OL 2007, ch. 518; House Bill (HB) 2218 - OL 270; HB 2756 - OL 2007, ch. 252; HB 2783 - OL 2007, ch. 656; HB 2943 - OL 2007, ch. 300

Need for the Rule(s): Chapter 436 must be amended to be consistent with the Workers' Compensation Law, as amended by legislation passed by the 2007 Oregon Legislature. Some of that legislation required the director to make rules to implement revised laws. The department is proposing additional changes to make the rules easier to understand, to streamline regulations affecting stakeholders, and to expand return-to-work incentives for the Employer-at-Injury Program and Preferred Worker Program.

Documents Relied Upon, and where they are available: "Issues" documents as presented to advisory committees; advisory committee meeting minutes; written advice from advisory committee members.

These records are available for public inspection in the Administrator's Office, Workers' Compensation Division of the Department of Consumer and Business Services, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7717 to request copies.

Fiscal and Economic Impact, including Statement of Cost of Compliance: The following is a list of significant estimated fiscal/economic impacts on persons and organizations affected by proposed rule amendments:

Amendments to implement changes in the Workers' Compensation Law

- Senate Bill 504 restricts emergency room physicians' rights to be attending physicians and authorize temporary disability benefits. Overall emergency-room treatment charges can be substantially higher than charges for visits to primary care physicians. In addition, early referral to primary care physicians should improve insurers' ability to keep track of authorization of temporary disability benefits and to promote return-to-work. The agency estimates that these changes should result in a small reduction in insurers' claims costs.
- Senate Bill 563 eliminates the requirement that managed care organizations (MCOs) send to the director copies of all new or amended treatment standards, protocols, and guidelines for the director's review and approval. In

the “Statement of Need and Fiscal Impact” filed with the Secretary of State on 8/14/06, DCBS estimated reporting costs for such reporting based on advice from MCOs. The low-high range of estimated reporting costs was then \$100 per year to \$50,000 per year per MCO, potentially \$400/year to \$200,000/year for the four active MCOs. The agency projects elimination of these reporting costs for MCOs.

- House Bill 2756 provides authority and limitations for several types of providers - chiropractors, naturopaths, podiatrists, and physician assistants - when acting as attending physicians. Because we cannot project how many injured workers will choose these providers as their attending physicians, we cannot now project the fiscal impacts. However, DCBS will monitor the effects of HB 2756 to identify impacts over time.
- House Bill 2783 requires insurers to notify the employer of termination of a guaranty contract 45 days in advance instead of the 30 days currently required. In addition, HB 2783 allows for a shorter notice requirement of only 10 days if the termination is based on nonpayment of premium. The agency projects some reductions in costs for insurers, because they can shorten their liability under the 10-day notice provision. The agency projects that these savings will be greater than any increased costs due to the 45-day notice provision, because insurers can adjust notice procedures in order to end liability, in most cases, by a date certain. The agency projects a small positive impact for employers subject to the 45-day notice, as it will give them more time to shop for cost-effective workers’ compensation insurance coverage.

In addition to changes to implement changes in the Workers’ Compensation Law:

Amendments to OAR 436, 009, “Oregon Medical Fee and Payment Rules” and OAR 436-160, “Electronic Data Interchange” (EDI)

- The agency projects that proposed rule changes will not have a significant fiscal impact on Oregon health care providers, as providers already send sufficient data to insurers on standard billing forms. The agency projects some fiscal impacts for insurers and self-insured employers, smaller for those companies already using EDI in other states and greater for Oregon-only reporters. The advisory committee did not express concerns about implementation costs. However, the agency projects significant costs for some insurers and self-insured employers in order to prepare for EDI, and also projects that these costs will eventually be exceeded by savings due to efficiencies inherent in electronic communication.

Amendments to OAR 436-035, “Disability Rating Standards”

- The agency projects that eliminating provision that if a value of impairment is determined for damage to the brain, no additional value for speech or psychiatric impairment is allowed, will have a positive economic impact on affected workers and an equal increased cost to affected insurers. However, this combination of medical conditions is very rare and the impact is not expected to be significant overall.

Amendments to OAR 436-050, “Employer/Insurer Coverage Responsibility”

- The agency projects that proposed rules affecting worker leasing companies will add a small cost to submit additional information with the application for initial license or renewal of license.
- Conversely, the purpose of these rule changes is to create a level playing field for leasing companies by preventing or removing unfair competition by companies that cannot or will not comply with worker leasing laws and rules. Successfully preventing unfair competition would have a positive economic effect on leasing companies that do comply with the laws and rules. Relative to taking no action, the agency projects a small positive economic impact on worker leasing companies.

Amendments to OAR 436-105, “Employer-at-Injury Program” (EAIP) and OAR 436-110, “Preferred Worker Program” (PWP)

- The agency projects that expanded benefits and administrative fees for the EAIP will cost the Workers’ Benefit Fund (maximum/annual):
 - Reimbursement of EAIP costs before the claim is accepted or denied (if ultimately denied)..... \$700,000.00
 - Increased reimbursable amount for EAIP purchases for tools and equipment \$300,000.00
 - Proposed fee payable to insurers for administration of the EAIP \$480,000.00
 - Total \$1,480,000.00

- The agency projects that expanded benefits for the PWP will cost the Workers' Benefit Fund (maximum/annual):
 - Providing Employment Purchases needed to create a new worksite..... \$100,000.00
 - Creating a miscellaneous category of Employment Purchase that may be used to help a worker find, accept, or retain employment \$100,000.00
 - Total \$200,000.00

- The agency projects that issuing PWP identification cards with no expiration date will increase use of premium exemption and thus increase costs to the Workers' Benefit Fund. However, the impact would be very minor in the near term and increase gradually over time. The agency does not have a basis to project how many workers will use their cards for future employment, but will monitor this closely.

- Additional proposed changes that expand access to reemployment incentives will have lesser impacts on the Workers' Benefit Fund; however, the agency does not have a basis to project how extensively these incentives will be used.

- All moneys paid out of the Workers' Benefit Fund would have a positive economic impact on Oregon employers and insurers. In addition to the direct dollar transfer, by promoting early return to work, the proposed rules may reduce claims costs. In addition, the proposed changes should positively affect injured workers by promoting early return to work, which produces better long-term employment outcomes.

- The Workers' Benefit Fund has adequate reserves to cover any increased costs resulting from proposed rule changes.

Regarding: Additional proposed changes:

- The agency estimates that additional changes will not have any significant negative economic impacts on any persons or businesses, including small businesses. Because a number of the proposed rule changes streamline processes, the agency projects a small overall positive economic impact of proposed rule changes not otherwise described.

How were small businesses involved in the development of this rule?

Representatives from small businesses participated in the stakeholder advisory committees.

Cost of compliance effect on small businesses:

Estimated number of small businesses subject to the proposed rule:

One managed care organization. (Of the four managed care organizations certified and active in the Oregon workers' compensation system, one managed care organization meets the definition of a small business under ORS 183.310.)

Identify the types of businesses and industries with small businesses subject to the proposed rule:

The proposed rule amendments will affect managed care organizations.

Describe the projected reporting, record-keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services:

Reporting: Proposed rule changes would require less reporting by managed care organizations, who will no longer have to send to the director copies of all new or amended treatment standards, protocols, and guidelines for the director's review and approval.

Record-keeping: Proposed rule changes may substantially reduce record keeping by a managed care organization only if organization keeps a running record of updated treatment standards, protocols, and guidelines for the purpose of reporting the updates to the director.

Other administrative activities and costs of professional services: For managed care organizations that contract with companies that specialize in provision of guidelines and protocols, there is the potential for reduced professional services costs.

Extent of economic impact: The agency projects a substantial reduction in reporting costs for MCOs.

Identify equipment, supplies, labor and increased administration required for compliance with the proposed rule:

Equipment: The proposed rule changes do not require the purchase of equipment to achieve compliance.

Supplies: The proposed rule changes do not require the purchase of supplies to achieve compliance.

Labor: The proposed rule changes do not require increased labor costs to achieve compliance.

Administration: The proposed rule changes do not require increased administrative costs to achieve compliance.

Extent of economic impact: No increased costs for these categories.

Administrative Rule Advisory Committee consulted:

Yes. Advisory committees met on 6/21/07, 7/10/07, 7/16/07, 7/17/07, 7/19/07, 7/20/07, 7/23/07, 7/26/07, 7/31/07

The agency asked the advisory committee for advice on the impact of the discussed changes on costs, including any significant adverse impacts on small businesses.

John L. Shilts 8-14-07

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



Employer/Insurer Coverage Responsibility
Proposed Oregon Administrative Rules
Chapter 436, Division 050

Summer/Fall 2007

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Revisions are marked as follows:

Deleted text has a "strike-through" style, as in ~~Deleted~~

However, deleted hyphens are enclosed in brackets [-].

Added text is bold and underlined, as in Added

HISTORY LINES: These rules include only the most recent "History" lines. The history line shows when the rule was last revised (or "filed" if the rule has never been revised) and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site: http://www.wcd.oregon.gov/policy/rules/full_set.html

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**
Proposed Rules EMPLOYER/INSURER COVERAGE RESPONSIBILITY

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050**

436-050-0003 Applicability of Rules

(1) These rules are effective ~~January 1, 2006~~ **November 28, 2007**, to carry out the provisions of:

- (a) ORS 656.017 - Employer required to pay compensation and perform other duties.
- (b) ORS 656.029 - Independent contractor status.
- (c) ORS 656.126 - Coverage while temporarily in or out of state.
- (d) ORS 656.407 - Qualifications of insured employers.
- (e) ORS 656.419 - Guaranty contracts.
- (f) ORS 656.423 - Cancellation of coverage by employer.
- (g) ORS 656.427 - Termination of guaranty contract or surety bond liability by insurer.
- (h) ORS 656.430 - Certification of self-insured employer.
- (i) ORS 656.434 - Certification effective until canceled or revoked; revocation of certificate.
- (j) ORS 656.443 - Procedure upon default by employer.
- (k) ORS 656.447 - Sanctions against insurer for failure to comply with contracts, orders or rules.
- (l) ORS 656.455 - Records location and inspection.
- (m) ORS 656.745 - Civil penalties.
- (n) ORS 656.850 and 656.855 - Worker-leasing companies.
- (o) ORS 731.475 - Insurer's in-state location.

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

Stat. Auth: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Amended 12/5/05 as WCD Admin. Order 05-075, eff. 1/1/06

436-050-0005 Definitions

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

(1) "Audited Financial Statement" means a financial statement audited by an outside accounting firm.

(2) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.

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

(4) "Complete Records" means:

(a) Written records that segregate and show specifically for each employer the amounts due from the employer and paid by the insurer or self-insured employer for premiums for insurance coverage, premium assessments, and any other moneys due the director;

(b) Written records of claims for compensation made under ORS chapter 656; and

(c) Written records of guaranty contracts issued as required by ORS chapter 656.

(5) "Controlling Person" means **a person having substantial ownership or who is an officer or director of a corporation, a member or manager of a limited liability company, offering worker leasing services, a shareholder holding 10 percent or more of the voting stock of a corporation offering worker leasing services, or a partner of a partnership, offering worker leasing services; or** **or** an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management, ~~or policies, of a company~~ **or operation of a person offering worker[-] leasing services through the ownership of voting securities, by contract or otherwise.**

(6) "Days" means calendar days unless otherwise specified.

(7) "Default" means failure of an employer, insurer or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612 and 656.614 at such intervals as the director shall direct.

(8) "Department" means the Department of Consumer and Business Services.

(9) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the matter, unless the context requires otherwise.

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

(11) "Double Coverage" means more than one guaranty contract is on file with the director for the same period of time.

(12) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.

(13) "Governmental Subdivision" means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.

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

(15) "Insurer" means a guaranty contract insurer.

(16) "Leased Worker" means any worker provided by a worker[-] leasing company on other than a "temporary basis" as described in OAR 436-050-0420.

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(17) "Person" means an individual, partnerships, corporations, joint ventures, limited liability companies ~~companies~~ **company**, associations, government agencies ~~agencies~~ **agency**, sole proprietorships, or other business entities ~~entities~~ **entity** allowed to do business in the State of Oregon.

(18) "Premium Assessments" means moneys due the director under ORS 656.612 and 656.614.

(19) "Process Claims" and its variations is the determination of compensability and management of compensation by an Oregon certified claims examiner. Although determining compensability and managing compensation must be done from within this state pursuant to ORS 731.475 and this definition, the act of making payment may be done from out-of-state as directed from the Oregon place of business.

(20) "Reinstatement" means the continuation of workers' compensation insurance coverage without a gap under a guaranty contract.

(21) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

(22) "Self-Insured Employer Group" means five (5) or more employers certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.

(23) "State" means the State of Oregon.

(24) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.

~~(24)~~**(25)** "Worker[-] Leasing Company" means a "person," as described in section (17) of this rule, who provides workers, by contract and for a fee, as established in ORS 656.850.

~~(25)~~**(26)** "Written" and its variations means that which is expressed in writing, including electronic transmission.

Stat. Auth: ORS 656.704 and 656.726(4)

Stats. Implemented: ORS 656.704 and 656.726(4)

Hist: Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0400 Responsibility for Providing Coverage under a Lease Arrangement

(1) Every worker[-] leasing company providing workers to a client shall satisfy the requirements of ORS 656.017, ~~and 656.407,~~ **or 656.419.**

(2) Every worker[-] leasing company providing leased workers to a client shall also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active guaranty contract on file with the director or is certified under ORS 656.430 as a self-insured employer. In the latter circumstance, the client's guaranty contract insurer or self-insured employer will be deemed to provide insurance coverage for all leased workers and subject workers of the client.

(3) If an insured client allows its guaranty contract to terminate or if a self-insured client,

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allows its certification to terminate and the client continues to employ subject workers or has leased workers, the client shall be considered a noncomplying employer unless the worker leasing company has made the filing with the director as provided in OAR 436-050-0410(1).

(4) A client can obtain leased workers from only one worker[-]leasing company at a time unless the client has an active guaranty contract on file with the director or is certified under ORS 656.430 as a self-insured employer.

(5) A worker leasing company shall not provide workers' compensation coverage for another worker leasing company.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855

Hist: Amended 12/3/03 as WCD Admin. Order 03-062, eff. 1/1/04

Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0410 Notice to Director of Lease Arrangement; Termination

(1) Within 14 days after the effective date of the lease arrangement or contract, a worker-leasing company must file written notice with the director and its insurer, using Form 440-2465, that it is providing leased workers to a client and workers' compensation coverage. The notice must be correct and complete, and must include:

(a) The client's:

- (A) Legal name;
- (B) FEIN or other tax reporting number;
- (C) Type of ownership;
- (D) Primary nature of business;
- (E) Mailing address; and
- (F) Street address in Oregon;

(b) The worker leasing company's:

- (A) Legal name;
- (B) Mailing address;
- (C) FEIN or other tax reporting number;
- (D) WCD worker leasing license number, if any;
- (E) Workers' compensation insurer's name (or "self-insured");
- (F) Effective date of leasing contract;
- (G) Contact name and phone number; and
- (H) A signature of a representative of the worker leasing company.

(2) A worker-leasing company may terminate its obligation to provide workers' compensation coverage by giving to its insurer, its client, and the director written notice of the termination. A notice of termination shall state the effective date and hour of termination, but the

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termination will be effective not less than 30 days after the notice is received by the director. Notice to the client under this section must be given by mail, addressed to the client at its last-known address.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855
Hist: Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0420 Temporary Worker Distinguished from Leased Worker

(1) A person who provides a worker to work for a client will be considered to be providing the worker on a “temporary basis” only if there is contemporaneous written documentation, retained by either the client or the temporary service provider, which indicates the duration of the work to be performed and the worker is provided pursuant to ORS 656.850(1)(b), under one or more of the following conditions:

(a) Special situations to cover employee absences or employee leaves, including but not limited to such things as maternity leave, vacation, jury duty, or illness from which the permanent worker will return to work;

(b) To fill a professional skill shortage;

(c) To staff a seasonal workload;

(d) To staff a special assignment or project where the worker will be terminated or assigned to another temporary project upon completion;

(e) A student worker provided and paid by a school district or community college through a work experience program; or

(f) The work contract is part of the client’s overall employment selection program, such as where new workers must satisfactorily pass a probationary period before being granted permanent employee status.

(2) If a person provides workers, by contract and for a fee, to work for a client and any such workers are not provided on a “temporary basis,” that person will be considered a worker[-] leasing company.

(3) If a person provides both leased workers and workers on a temporary basis, that person shall maintain ~~payroll~~ **written** records that show specifically which workers are provided on a temporary basis. If the ~~payroll~~ **written** records do not specify which workers are provided on a temporary basis, all workers are deemed to be leased workers.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855
Hist: Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03
Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)
Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0440 Qualifications, Applications, and Renewals for License as a Worker[-] Leasing Company

(1) Each applicant **person applying** for initial license or renewal as a worker[-] leasing company shall:

(a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division to conduct business in this state;

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(b) Maintain workers' compensation coverage pursuant to ORS 656.017; and

(c) **Upon application approval and prior to licensure, P**pay the required licensing fee of \$2,050.

(2) Each ~~applicant~~ **person applying** for initial license or renewal as a worker[-] leasing company must submit an application for license on Form 440-2466. The form and accompanying documentation must include:

(a) Legal name;

(b) Mailing address;

(c) In-state and out-of-state phone numbers;

(d) FEIN or other tax reporting number;

(e) Type of business;

(f) Physical address for Oregon principal place of business;

(g) Assumed business names;

(h) Name of workers' compensation insurer (or "self-insured") and policy number;

(i) WCD employer number, if any;

(j) Name(s) and titles **contact information** of authorized **the** representative(s) **at the Oregon location(s)**; ~~including the Oregon representative;~~

(k) List of controlling persons ~~holding or controlling 10 percent or more interest in the company,~~ including their names, titles, residence addresses, **telephone numbers, email addresses,** and dates of birth;

(l) ~~A record of any present or prior worker leasing company services provided in any state and an explanation of those services;~~

~~(m)~~ **(l)** A letter of verification ~~or~~ **and** good standing from the controlling regulatory agency of those states in which a worker leasing license or certification **was previously, or** is currently held;

~~(n)~~ **(m)** Verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 440-2466, the worker leasing license application;

(n) A record of any present or prior worker leasing experience in any state, by the person or any controlling person, and an explanation of that experience;

(o) A record of any **bankruptcies, liens, or any** actions ~~in which an essential element of the action involved~~ **involving** fraud, theft, ~~or~~ embezzlement, **forgery, or money laundering** ~~of monies~~ on the part of the applicant **person** or any controlling person; such actions may include:

(A) Criminal convictions;

(B) Lawsuits;

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(C) Guilty pleas; or

(D) Judgments; ~~or~~

~~(E) Administrative actions;~~

(p) Full details regarding any **bankruptcy, liens, or** action ~~taken~~ under subsection (o) of this section, including:

(A) The nature and dates of the action(s);

(B) Outcomes, sentences, and conditions imposed;

(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and

(D) The designation and license number for any actions against a license;

(q) Full details of any administrative actions against the person by a regulatory agency of any state regarding matters referenced in OAR 436-050-0440(2)(o) or worker leasing activities.

~~(q)(r)~~ **(r)** A plan of operation which demonstrates how the worker[-] leasing company will meet the requirements of ORS chapter 654, The Oregon Safe Employment Act, and collect the information necessary to establish each client's experience rating; and

~~(s)~~ **(s)** A notarized signature of an authorized representative of the applicant.

~~(3) Incomplete or incorrectly completed application packages will be rejected and returned to the applicant. The applicant will not be authorized to lease employees until the director has issued a license.~~

(3) The director may request additional information to further clarify the information and documentation submitted with the application. Under ORS 656.850(2), no person shall perform services as a worker leasing company in Oregon without first being licensed to do so.

~~(4) Upon receipt of a completed application package, the application will be reviewed. The department may conduct a background investigation of each individual applicant and controlling person. If the application is approved, the director will issue a license. **The director will review complete applications, and may conduct a background investigation of the person applying for a license or any controlling person. Information learned through a background investigation, or other information submitted during the application process, may be the basis for the director to refuse to issue or renew a license, or to disqualify the person from making further application.**~~

(5) If the application is approved, the director will issue a license. Each license issued under these rules shall automatically expire two years after the date of issuance unless renewed by the licensee. **A request for renewal of a worker leasing license must be submitted at least 45 days before the expiration date of the current worker leasing license.**

(6) The director may refuse to issue or renew a license or may disqualify a person from applying for a license in the future for misrepresentation or failure to meet any of the

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requirements of ORS 656.850, 656.855, or these rules.

(7) A person may appeal the director's refusal to approve and issue or renew a license under this rule as provided in OAR 436-050-0008 and OAR 436-001.

(8) "Disqualification," as used in this rule, means a prospective worker leasing company may reapply no sooner than two years from the disqualification date.

(9) A disqualification may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person or controlling person.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855

Hist: Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0450 Recordkeeping and Reporting Requirements

(1) Every licensed worker[-]_leasing company must give notice to the director of one Oregon location where Oregon leasing records are kept. The notice must include the physical address, mailing address, telephone number, and any other contact information in this state.

(2) Every licensed worker[-]_leasing company must have at least one representative of the worker[-]_leasing company at the Oregon location ~~who is able~~ **authorized** to respond to inquiries **and make records available** regarding leasing arrangements and client contracts.

(3) The following records must be kept at the Oregon location:

(a) Copies of signed worker leasing notices;

(b) Copies of signed notices of termination of leasing arrangements;

(c) Copies of signed contracts between the worker[-]_leasing company and clients; and

(d) Payroll records for all workers ~~which~~ **that** identify leased workers subject to coverage by the worker[-]_leasing company; leased workers not subject to coverage by the worker[-]_leasing company; and, ~~payroll~~ **written** records for all regular and temporary employees of the worker[-]_leasing company.

(4) ~~If the designated Oregon location, or representative is changed, the~~ **The** worker[-]_leasing company must notify the director within 30 days of the effective date of ~~the~~ **a** change **in any items listed in OAR 436-050-0440(2).**

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855

Hist: Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0455 Reporting Requirements of a Self-Insured Worker-Leasing Company

(1) A self-insured worker-leasing company shall maintain and report to the National Council on Compensation Insurance separate statistical data for each client whose coverage is provided by the self-insured employer. Reporting shall be according to the uniform statistical plan prescribed by the director according to ORS 737.225(4).

(2) Records relating to the client statistical data for self-insured worker-leasing

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companies shall be made available for review by the National Council on Compensation Insurance upon request.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855
Hist: Amended 6/22/01 as WCD Admin. Order 01-054, eff. 7/1/01

436-050-0460 ~~Disqualification, Suspension, or~~ Revocation of License

(1) ~~The director may disqualify, suspend or revoke the worker leasing company's license upon a determination that the worker leasing company has failed to comply with ORS 656.850, 656.855, or these rules. Reasons for disqualification, suspension or revocation~~ **of a worker leasing license** include, but are not limited to:

(a) Insolvency, whether the worker[-] leasing company's liabilities exceed their assets or the worker[-] leasing company cannot meet its financial obligations;

(b) **Judgments against or convictions, within the last ten years, of any worker leasing company or controlling person for the reasons identified in OAR 436-050-0440(2)(o);** ~~If the worker leasing company or any controlling person has been convicted of dishonest, fraudulent or illegal practices or conduct in any business or profession;~~

(c) **Administrative actions involving worker leasing activities resulting from failure to comply with the requirements of any state;**

~~(e) If any controlling person has been convicted of a crime within the past 10 years, an essential element of which is fraud, theft, or embezzlement of monies;~~

(d) **Nonpayment of taxes, fees, assessments, or any other monies due the State of Oregon;**

~~(d)(e) If the worker[-] leasing company has willfully violated or has failed to comply with any provisions of ORS Chapters 654, 656, 659, 659A, 731 or 737; or any provisions of these rules; or~~

~~(e)(f) If the worker[-] leasing company is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker[-] leasing business.~~

(2) For the purposes of this rule:

~~(a) "Disqualification" and its variations means a refusal by the director to issue a license to a prospective worker leasing company for failure to meet the requirements of ORS 656.850, 656.855, or these rules.~~

~~(b)(a) "Suspension" and its variations means a stopping by the director of the worker[-] leasing company's authority to provide leased workers to clients for a specified period of time. A suspension may be in effect for a period of up to two years. When the suspension expires, the worker leasing company may petition the director to resume its worker leasing company activities.~~

~~(e)(b) "Revocation" and its variations means a permanent stopping by the director of the worker[-] leasing company's authority to provide leased workers to clients. After a revocation has been in effect for five years or longer, the worker leasing company may reapply for~~

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license.

~~(d)~~**(c)** "Show-cause hearing" means an informal meeting with the director in which the worker[-]_leasing company shall be provided an opportunity to be heard and present evidence regarding any proposed ~~orders~~ **actions** by the director to suspend or revoke a worker[-]_leasing company's authority to provide leased workers to clients.

(3) The director may revoke a license upon discovery of a misrepresentation in the information submitted in the worker leasing application.

~~(3)~~**(4)** Suspension or revocation under this rule will not be made until the worker[-]_leasing company has been given notice and the opportunity to be heard through a show-cause hearing before the director and "show cause" why it should be permitted to continue to be licensed as a worker[-]_leasing company.

~~(4)~~**(5)** A show-cause hearing may be held at any time the director finds that a worker[-]_leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.

~~(5)~~ Following a show-cause hearing, the director may rescind the proposed order if the worker leasing company establishes to the director's satisfaction its ability and commitment to comply with ORS chapter 656 and these rules.

~~(6)~~ A suspension may be in effect for a period of up to two years.

~~(7)~~ After a revocation of a worker leasing company's authority to provide leased workers to clients has been in effect for five years or longer, it may reapply for license.

~~(8)~~**(6)** Appeal of proposed and final orders of suspension or revocation issued under this rule may be made as provided in OAR 436-050-0008 and OAR 436-001.

~~(9)~~**(7)** Notwithstanding section ~~(3)~~**(4)** of this rule, the director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker[-]_leasing company fails to maintain workers' compensation coverage; or if the director finds there is a serious danger to public health or safety.

~~(10)~~**(8)** A ~~disqualification~~, suspension or revocation will **may** apply to any new **entity worker leasing company** created from the disqualified, suspended, or revoked entity through the sale, transfer, or conveyance of ownership interest or of the **entity's worker leasing company's** assets to another **entity person** which takes over its operations.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855

Hist: Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-050-0470 Monitoring/Auditing

(1) The division will monitor and conduct periodic audits of employers as necessary to ensure compliance with the worker-leasing company licensing and performance requirements.

(2) All pertinent records of the worker-leasing company required by these rules must be disclosed upon request of the director.

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(3) Pursuant to ORS 656.726 and 656.758, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers must provide the director with all pertinent books, records and payrolls upon request.

(4) For the purposes of this rule, both the worker-leasing company and its clients shall be considered employers.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855

Hist: Amended 8/28/03 as WCD Admin. Order 03-056, eff. 9/15/03

436-050-0480 Assessment of Civil Penalties

(1) The director may assess a civil penalty against an employer who fails to respond to requests for information and fails to meet the requirements of 436-050-0470. The matrix attached to these rules in Appendix "A" will be used in assessing these penalties. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(2) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty based on the matrix in Appendix "B", attached to these rules.

(3) An employer who is found to be operating a worker leasing company without having obtained a license or having failed to renew a license pursuant to ORS 656.850(2), may be assessed a civil penalty based on the matrix attached to these rules in Appendix "C".

(4) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month in which an employer provides leased workers to a client without having first obtained a worker leasing license.

(5) Any person or controlling person may also be subject to penalties under ORS 656.990.

Stat Auth: ORS 656.704, 656.726(4), 656.850 and 656.855; **Stats. Implemented:** ORS 656.850 and 656.855

Hist: Amended 5/25/05 as WCD Admin Order 05-055, eff. 6/1/05

Amended 5/31/07 as WCD Admin. Order 07-052, eff. 6/1/07 (Temporary)

Amended xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

APPENDIX A

OAR 436-050-0480

Penalty Matrix For Failure To Respond To Information Requests

NUMBER OF DAYS LATE	NUMBER OF VIOLATIONS				
	1	2	3	4	5+
1-7	\$0	\$50	\$100	\$200	\$300
8-14	\$50	\$100	\$200	\$400	\$800
15-21	\$100	\$200	\$400	\$800	\$1000
22+	\$200	\$400	\$800	\$1000	\$1250

APPENDIX B

OAR 436-050-0480

Penalty Matrix For Recordkeeping Violations

TYPE OF RECORD	NUMBER OF COMPLIANCE REVIEWS/AUDITS OCCURRENCES			
	1	2	3	4
Signed client contract	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max
Worker Leasing Notice Filed With WCD In 14 Days	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max	\$300 each violation \$1500 max
Worker Leasing Notice In File	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max
Effective Date On Worker Leasing Notice Same As On Client Contract	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max
Cancellation of Worker Leasing Notice In File	\$50 each violation \$250 max	\$100 each violation \$500 max	\$150 each violation \$750 max	\$200 each violation \$1000 max

APPENDIX C

OAR 436-050-0480

ORS 656.850 (2)

Penalty Matrix For Operating as a Worker Leasing Company Without a License

MONTHS

<u>Up to</u> 1 MONTH	2-3 MONTHS	4-5 MONTHS	6+ MONTHS
\$500	\$1,000	\$1,500	\$2000

