

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

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**TEMPORARY OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 50**

EFFECTIVE OCTOBER 7, 1991

Extract from Order of Adoption: During the 1991 General Session, the Legislature made several changes to the Workers' Compensation Law. House Bill 2474, which became effective July 1, 1991, eliminated the need for employers to provide coverage for certain types of home health care workers, volunteers, foster parents and adult foster care personnel. House Bill 2487 became effective September 28, 1991 and provided an exemption from coverage for corporate officers who are involved in the commercial harvest of timber or construction and who are members of the same family. House Bill 3574, which was effective July 1, 1991, exempts certain cities and counties from the requirement of posting a deposit in order to self-insure.

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EXHIBIT "A"

436-50-045 Nonsubject Workers

(1) As used in ORS 656.027(1):

(a) "Private employment contract" means direct employment of the worker by the owner of the private home.

(b) As used in this rule, "owner of the private home" means any person who occupies and either owns or rents the private home. or any person related by blood or marriage to that person, or any person who by direction of that person or by order of a court has become responsible for managing the household affairs of that person.

(2) As used in ORS 656.027(18):

(a) "A person performing foster parent duties" means any person certified by the

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Children's Services Division under ORS Chapter 418 as a foster parent, or any person employed by that person in the operation of a foster home as defined in ORS Chapter 418 and any rules promulgated thereunder.

(b) "A person performing adult foster care duties" means any person licensed by the Senior and Disabled Services Division or the Mental Health and Developmental Disability Services Division to operate an adult foster home, or any person employed by the operator to perform services of assistance to the residents of the adult foster home.

(3) As used in this rule, "adult foster home" means any family home or facility, licensed under ORS 443.705 to 443.825, in which room, board, and 24-hour care services are provided, for compensation, to five or fewer adults who are not related to the operator by blood or marriage.

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)

436-50-050 Corporate Officers, Partnerships; Subjectivity

(1) A corporate officer who is also a director of the corporation and has a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officer, is a nonsubject worker pursuant to ORS 656.027(9).

(2) Notwithstanding section (1) of this rule, if the activities of the corporation involve the commercial harvest of timber or building and construction, the following provisions apply:

(a) If every corporate officer is also a director of the corporation, has a substantial ownership interest in the corporation, and is a qualifying member of the same family, then the corporation shall not be limited as to the number of eligible officers it may designate as nonsubject workers.

(a)(b) In all other circumstances, t^[T]**he maximum number of exempt corporate officers for the corporation shall be whichever is greater of the following:**

- (A) Two corporate officers; or
- (B) One corporate officer for each 10 corporate employees.

(b)(c) If a corporation has a variable or fluctuating number of employees, the number of corporate employees for purposes of section (2)^[a](b)(B) of this rule is the average number of full time equivalent corporate employees on the last day of each calendar month of the preceding calendar year.

(c)(d) Each corporation shall designate in writing which of its eligible officers are to be exempt from coverage. Such designations shall remain in effect until the corporation files a revised written designation, to be effective upon receipt. An insured corporation shall file this designation with its insurer. A self-insured corporation shall file this designation with the Department. If a corporation does not file its initial designation, or if a corporation is noncomplying, then the corporation's exempt officers shall be determined in the order of the following list:

- (A) President;
- (B) Secretary, if any;
- (C) Vice President, if any;

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(D) Secretary-Treasurer, if any;

(E) Treasurer, if any;

(F) All other Officers, if any.

[(d)](e) If there is more than one person in any of the offices listed in section (2)[(c)](d)(A) through (F) of this rule, the sequence of those persons will be determined by order of birth, with the youngest first and the oldest last.

[(e)](f) Noncomplying corporations, regardless of the number of employees, are limited to two (2) exempt officers, to be determined in accordance with section (2)[(c)](d) of this rule.

(g) A corporation without workers' compensation coverage, of which every corporate officer is also a director of the corporation, has a substantial ownership interest in the corporation, and is a qualifying member of the same family shall not be considered noncomplying. All such officers shall be presumed to have elected to be nonsubject workers.

[(f)](h) For the purposes of sections (1) and (2) of this rule:

(A) "Building and construction" includes any work included in the definition of "Contractor" contained in ORS 701.005.

(B) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(C) "Director" means a person authorized to serve as a Director by the incorporators in the Articles of Incorporation or elected and qualified as a Director in accordance with the Articles of Incorporation or bylaws.

(D) "Eligible Officer" means a corporate officer who is also a Director of the corporation and who has a substantial ownership interest in the corporation.

(E) "Noncomplying" means an employing corporation of subject workers which is in violation of ORS 656.017(1).

(F) "Qualifying member of the same family" means persons who are members of the same family and who each bear one of the following relationships to one of the others: parent, daughter, son, daughter-in-law, son-in-law, grandchild, spouse, or sibling.

[(F)](G) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all stockholders or 10 percent, whichever is less.

(3) Notwithstanding section (1) of this rule, if the activities of the corporation are conducted on land that receives farm use tax assessment, all individuals identified as directors in the corporate bylaws are nonsubject workers pursuant to ORS 656.027(9), regardless of ownership interest, provided the directors are members of the same family, whether related by blood, marriage or adoption.

(4) Partners, when engaged in work in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. For the purposes of this section:

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(a) "Engaged" means to physically take part in the work involved.

(b) "Direct connection" means any activity which must be accomplished before the project on the real property is completed.

(5) Nothing in this rule requires coverage for a corporate officer who is not a "worker", as defined in ORS 656.005(28).

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Amended 12/18/87 as WCD Admin. Order 9-1987, eff. 1/1/88
Amended 6/18/90 as WCD Admin. Order 9-1990, eff. 7/1/90 (Temp)
Amended 11/29/90 as WCD Admin. Order 27-1990, eff. 12/26/90
Amended 10/4/91 as WCD Admin. Order 8-1991 eff. 10/7/91 (Temporary)

436-50-175 Annual Reporting Requirements

(1) In order to determine the financial status of a self insured employer and to evaluate the employer's continuity of operation, annually a self-insured employer shall file, within 120 days of the employer's fiscal year end, an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. All financial statements and annual financial reports filed, as required by this section, shall be retained by the Division for a period of at least 3 years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true, accurate and presents the employers financial condition and results of operations as of the date of the statement, if the employer also:

(a) Deposits and maintains the surety deposit in the form of a surety bond approved by Compliance, or

(b) Increases the surety deposit, in a form approved by Compliance, by \$100,000 over the amount as determined pursuant to 50-180.

(2) In order to ensure continuity of coverage, each self-insured employer shall submit an annual endorsement to their application for self-insurance in the form prescribed by the Director. The endorsement shall be filed by March 1 of each year.

(3) Notwithstanding subsections (1)(a) and (b) of this rule or section (5) of 50-160 Compliance may require an employer to submit an audited financial statement.

(4) The self-insured employer shall report the claim loss data necessary for the purposes of experience rating modification, retrospective rating calculations and determining deposits as requested by the Department by April 1, 1990, and by March 1, of each successive year. [The Director will, by bulletin, prescribe guidelines for self-insured employers and their authorized representatives to use in providing this data.]

(a) The Director will, by bulletin, prescribe guidelines for self-insured employers and their authorized representatives to use in providing the required data.

(b) Each self-insured city or county that is exempted from the security deposit requirements in accordance with ORS 656.407(3) and OAR 436-50-185 shall, in addition to the above, provide the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

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(5) If a self-insured employer fails to comply with the requirements of sections (1), (2), or (4) of this rule, the Director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase their deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties for up to \$250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification as a self-insured.

(6) In order to ensure each self-insured's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the Compliance Section will perform routine test audits. If a self-insured's total claims values are found to be 10% or more below the Department's determined values, **the current experience rating will be recalculated using the department's determined values and will be used in the security deposit and retrospective rating calculations. In addition,** penalties may be assessed.

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436-50-185 Deposit Exemption For Self-Insured Cities and Counties Qualifications. Application Procedures Conditions and Requirements Revocation and Requalification

(1) A self-insured city or county may make application to be exempt from the security deposit requirements of ORS 656.407(2). Pursuant to ORS 656.407(3) the requirements to qualify for exemption are as follows:

(a) The city or county must be a certified self-insured employer, not a member of a self-insured employer group, in compliance with ORS 656.407(2) and OAR 436-50-180 as an independently self-insured employer for the 3 consecutive years immediately prior to making application for the exemption.

(b) The city or county has in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director pursuant to ORS Chapter 656. The workers' compensation loss reserve account shall also be dedicated to and expended only for payment of compensation and amounts due the director by the city or county under ORS Chapter 656.

(2) A written application requesting exemption from subsection (2) of ORS 656.407 shall be submitted to Compliance no later than 45 days prior to the date the exemption is desired to become effective. The application shall include the following supporting documentation for review and approval:

(a) A copy of the city's or county's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740 that identifies the actuarially sound funded amount in the dedicated workers' compensation loss reserve if not previously filed as required by OAR 436-50-175(1).

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(b) A copy of the city's or county's current fiscal year's approved budget that states the budgeted amount for the funded workers' compensation loss reserve account.

(c) A resolution or ordinance passed by the city's or county's governing body that establishes an actuarially sound and adequately funded workers' compensation loss reserve account that dedicates the workers' compensation loss reserve account to and limits expenditures to only the payment of compensation and amounts due the director under ORS Chapter 656. The resolution shall also include the director's first lien and priority rights to the full amount of the workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS Chapter 656.

(d) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, the procedures methods and criteria used in the process of determining the amount funded in their actuarially sound workers' compensation loss fund including procedures for determining the amount for injuries incurred but not reported. The statement shall include the city's or county's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.

(3) Within 45 days of receipt of all information required in section (2) of this rule, Compliance will review the application and supporting documentation and notify the city or county that the request for exemption under ORS 656.407(3) is approved or denied.

(a) If denied the notice will provide the reasons for the denial, any requirements for reconsideration and the right to Administrative Review as provided by Rule 50-008.

(b) If approved the notice shall include:

(A) The confirmation of the effective date of exemption.

(B) Authorization for cancellation of any surety bond held as security pursuant to ORS 656.407(2) and OAR 436-50-180.

(C) Procedures for release of any Government Securities or Time Deposits held as security pursuant to ORS 656.407(2) and OAR 436-50-180.

(4) Probable cause to believe the workers' compensation loss reserve account is not actuarially sound includes but is not limited to: The annual audited financial statement under ORS 297.405 to 297.740 not containing a statement by the auditor that the workers compensation loss reserve account is adequately funded, or containing a disclaimer regarding the auditors qualifications or ability to determine adequacy of the loss reserve account.

(5) A city or county that has been exempted from subsection (2) of ORS 656.407 and desires to terminate its self insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve shall:

(a) Submit written request to Compliance at least 60 days prior to: the desired effective date the self-insured certification is requested to be terminated; or the effective date that the qualifying workers' compensation loss reserve account is to be discontinued.

(b) If the self-insured certification is to be terminated, the request for termination shall comply with the requirements of OAR 436-50-200. Prior to the

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effective date of termination the city or county shall provide surety, as required by the director, in an amount determined pursuant to OAR 436-50-180 and ORS 656.443.

(c) If the city or county desires to remain self-insured the city or county shall requalify for self-insurance certification by depositing prior to the date the qualifying workers' compensation loss reserve account is to be discontinued, such surety as required by the director pursuant to ORS 656.407(2) and OAR 436-50-180. Pursuant to ORS 656.407(3)(e) failure to deposit the required surety with Compliance prior to the date of discontinuance of the qualifying workers' compensation loss reserve account shall cause the city's or county's self-insurance certification to be automatically revoked as of that date.

Hist: Filed 10/4/91 as WCD Admin. Order 8-1991, eff. 10/7/91 (Temporary)