



Oregon

Kate Brown, Governor

Department of Consumer and Business Services

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Industry Notice

Dec. 7, 2020

To: The workers' compensation community, employers, and insurance agents

Subject: Coverage requirements for drivers who lease their trucks

Under Oregon law, any person who employs a subject worker must provide workers' compensation coverage for that worker. A subject worker is any person who provides services for a remuneration, is subject to the direction and control of an employer, and is not covered by a specific exclusion.

One of these exclusions, ORS 656.027(15), applies to drivers who are employed by for-hire motor carriers and who lease their vehicles. The law provides:

A person who has an ownership or leasehold interest in equipment and who furnishes, maintains and operates the equipment [is not a subject worker]. As used in this subsection 'equipment' means:

- (a) A motor vehicle used in the transportation of logs, poles or piling.
- (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.
- (c) A motor vehicle used in the transportation of property by a for-hire motor carrier that is required under ORS 825.100 [ODOT] or 825.104¹ [USDOT] to possess a certificate or permit or to be registered.

On Oct. 21, 2020, the Oregon Court of Appeals issued an opinion in [SAIF Corp. v. Ward](#), 307 Or App 337 (2020). The opinion interprets the term "leasehold interest" as used in ORS 656.027(15)².

The court found that to have a "leasehold interest" in a motor vehicle, a worker must have the right to possess, use, and control the vehicle for purposes other than providing it to the carrier. The court found that a worker who does not have this right is not covered by the exclusion in ORS 656.027(15) and is therefore a subject worker, unless covered by another exclusion.

If a business is a for-hire motor carrier, and the drivers do not have the right to possess, use, and control their trucks for purposes other than providing the trucks to the business, **then it may be required to provide workers' compensation coverage**. We recommend for-hire motor carriers in this situation discuss coverage needs with an insurance professional as soon as possible.

¹ If you are an interstate carrier required to possess a certificate or permit under ORS 825.104, but you have no fixed place of business in Oregon, your drivers are excluded under ORS 656.027(5) while engaged in interstate commerce.

² The opinion did not interpret the term "leasehold interest" as used in ORS 656.027(28), an exclusion for workers who lease vehicles used as taxicabs or for nonemergency medical transportation. Because ORS 656.027(28) includes its own definition of "lease," the opinion does not apply to this exclusion.

Noncompliance with workers' compensation coverage could result in substantial penalties. If a business does not have coverage and a worker is injured and files a claim, the business's officers, directors, managers, members, or partners could also be found personally liable for any claims costs, which may not be dischargeable in bankruptcy. For the purposes of penalties and claim costs, a person who is personally liable is not protected by any limits to liability as a shareholder in a corporation or a member in an LLC.

We appreciate your compliance with Oregon workers' compensation law. If you have questions, contact Barbra Hall at 503-947-7665 or email Barbra.Hall@oregon.gov.

A handwritten signature in blue ink that reads "Sally Coen". The signature is written in a cursive style with a large initial 'S'.

Sally Coen, Administrator
Workers' Compensation Division

Distribution: GovDelivery, employers, insurers