



**Oregon**  
Kate Brown, Governor

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**Industry Notice**

Dec. 9, 2019

**To:** Insurers, self-insured employers, service companies, workers, attorneys, and other interested parties

**Subject:** Interpretation of “significantly limited in repetitive use” under OAR 436-035-0019

**SUMMARY:**

This industry notice clarifies the Workers' Compensation Division's (WCD) interpretation of when a worker is “significantly limited in the repetitive use” of a body part under OAR 436-035-0019(1), following *Broeke v. SAIF*, 300 Or App 91 (2019).

**BACKGROUND:**

Under OAR 436-035-0019(1), “[a] worker is entitled to a 5 percent chronic condition impairment value for each applicable body part, when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, the worker is **significantly limited in the repetitive use**” of one or more of the listed body parts.

In *Spurger v. SAIF*, 266 Or App 183 (2014), the Court of Appeals held that, when evaluating whether a worker is “significantly limited in the repetitive use” of a body part, the relevant inquiry is whether the limitations described in the medical-opinion evidence show that the worker is significantly limited, and not whether a physician described the limitations as “significant” according to the physician’s understanding of the term.

Following *Spurger*, WCD issued an [industry notice](#), dated Dec. 22, 2014, that explained its interpretation and implementation of OAR 436-035-0019(1).

Recently, in *Broeke v. SAIF*, 300 Or App 91 (2019), the Court of Appeals found that WCD’s interpretation of OAR 436-035-0019(1) is plausible and entitled to deference. Furthermore, the court stated OAR 436-035-0019, as interpreted by WCD, authorizes a chronic condition impairment value for a worker who can repetitively use the body part at issue for at most two-thirds of a period of time, which, according to the court, means a worker who is restricted from repetitive use of a body part for one-third or more of a period of time is entitled to a chronic condition impairment value. The court’s statement regarding WCD’s interpretation was not our intent, and this updated industry notice clarifies how WCD interprets and implements OAR 436-035-0019(1).

**INTERPRETATION AND IMPLEMENTATION:**

WCD determines “whether the limitations described in the medical-opinion evidence show that the worker is significantly limited” under OAR 436-035-0019(1). “Significantly limited” is defined by neither rule nor statute. Absent statutory and administrative definition, WCD looks to a term’s plain meaning. “Significant” is defined, most relevantly, as “having or expressing a meaning; meaningful” or “important; notable; valuable.”

*See* The American Heritage Dictionary, New College Edition; *see also*, Webster's II New College Dictionary. "Limited" is defined as "confined or restricted." *Id.*

In applying these definitions to OAR 436-035-0019(1), WCD found it reasonable to adopt a standard to define when a confinement or restriction is important, meaningful, or notable. Accordingly, WCD interprets confined or restricted ("limited") "repetitive use" under OAR 436-035-0019(1) as important, meaningful, or notable ("significant") when the worker has permanently lost the ability to repetitively use the body part for more than two-thirds of a period of time (or said another way, when the worker is only able to repetitively use the body part for less than one-third of a period of time).

If you have questions, contact [Jennifer Millemann](#) at 503-947-7759.

A handwritten signature in blue ink that reads "Sally Coen". The signature is fluid and cursive, with the first name "Sally" and last name "Coen" clearly distinguishable.

Sally Coen, Interim Administrator  
Workers' Compensation Division

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