



August 28, 2023

Proposed Changes to Workers' Compensation Rules

Caption: 2024 Workers' Benefit Fund Assessment Rate

The Workers' Compensation Division proposes to amend OAR 436-070, "Workers' Benefit Fund," rules 0003 and 0010.

When is the hearing? September 21, 2023, 4 p.m.

Where is the hearing? By video or telephone conference – Microsoft Teams:

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How can I make a comment? Attend the hearing (virtually) and speak, send written comments, or do both. Send written comments by:
Email – WCD.Policy@dcbs.oregon.gov, Attention: rules coordinator
Or

Attn: Rules Coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480 (for mail delivery)
Salem, OR 97309-0405

Or
Fax – 503-947-7514

The closing date for written comments is September 28, 2023.

Questions? Contact Marie Loiseau, 971-286-0316.

Proposed rules and public testimony are available on the Workers' Compensation Division's website: <http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>. Or, call 971-286-0316 to get paper copies.

Auxiliary aids for persons with disabilities are available upon advance request.

Summary of proposed changes:

- Rule 003 includes the effective date for OAR 436-070, and this date will be revised from Jan. 1, 2022 to Jan. 1, 2024.
- Rule 0010 will set the 2024 Workers' Benefit Fund assessment rate. Analysis to determine the rate is ongoing. The proposed assessment rate will be announced by mid-September.

The agency 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.

Need for the rule(s): The Workers' Benefit Fund (WBF) assessment rate has been established through rulemaking, and this rulemaking is needed to adjust the rate applied to hours worked in 2024. The WBF supports several important programs, including return-to-work incentive programs and a program that provides cost-of-living increases for some worker benefits. ORS 656.506(5), states in part, "The Legislative Assembly intends that the department set rates for the collection of assessments . . . in a manner so that at the end of the period for which the rates are effective, the balance of the Workers' Benefit Fund is an amount of not less than 12 months of projected expenditures from the fund in regard to the department's functions and duties" The agency will propose an assessment rate it projects will continue to fund the WBF to a level exceeding 12 months of projected expenditures.

Documents relied upon and where they are available: "Workers' Benefit Fund Assessment Rate Recommendation for CY 2024" (to be available by mid-September). These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Contact Marie Loiseau, rules coordinator, 971-286-0316, WCD.Policy@dcbs.oregon.gov.

Fiscal and economic impact: The agency director is required to maintain sufficient funds in the Workers' Benefit Fund (WBF) for not less than 12 months of projected expenditures. The agency will propose a rate it estimates will be sufficient to maintain at least a 12-month fund balance. The proposed WBF assessment rate will be announced by mid-September.

Statement of cost of compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Workers' Benefit Fund (WBF) supports several agency programs that benefit Oregon workers, employers, and insurers. Sufficient funding of the WBF ensures these benefits continue as provided by statutes and rules.

The WBF assessment is calculated by multiplying the number of hours worked by an employee by a fixed amount – 2.2 cents per hour in 2023. The employer deducts one-half of that amount from the employee’s wages and contributes an equal amount along with a combined tax and assessment report form prescribed by the Oregon Department of Revenue.

The assessment rate needed to maintain sufficient moneys in the WBF is determined in part by the number of hours worked by Oregon workers. The agency relies on economic forecasts in its estimates of revenues to the WBF, as well as expenditures. The agency’s review of economic forecasts cannot be completed before this filing. “Workers’ Benefit Fund Assessment Rate Recommendation for CY 2024” will be available at the public rulemaking hearing, and will include forecasts of WBF revenues and expenditures.

The proposed WBF assessment rate will be announced by mid-September.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

All subject employers are required to pay the Workers’ Benefit Fund (WBF) assessment. Approximately 135,000 Oregon employers are subject to the WBF assessment. About 90 percent of employers are small businesses (50 or fewer employees).

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The agency projects a small cost for employers to adjust payroll systems to reflect any increase or decrease in the Workers’ Benefit Fund assessment rate. The agency does not have data it can use to estimate the specific dollar impact of this adjustment.

c. Equipment, supplies, labor and increased administration required for compliance:

The agency projects that there will be no impact on equipment, supplies, labor, or increased administration required for compliance, with or without any adjustment in the Workers’ Benefit Fund assessment rate.

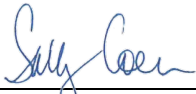
How were small businesses involved in the development of this rule? Small businesses have not been involved in determining whether to propose a change in the assessment rate. Any proposed revision will be based on an actuarial analysis of income to the Workers’ Benefit Fund relative to outflows and the statutory requirement under ORS 656.506 to maintain funds sufficient for not less than 12 months of projected expenditures.

Statement identifying how adoption of the rule will affect racial equity in this state: The Workers’ Compensation Division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes [lists of occupations and](#)

[numbers of Americans employed broken down by race](#). Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, increased or decreased workers' compensation benefits may impact these racial groups more than others. The agency does not have sufficient data needed to estimate specific effects on racial equity in Oregon, but invites public input.

Administrative Rule Advisory Committee consulted?: No. If not, why?

The agency did not consult an advisory committee because any proposed change will be based on an actuarial analysis of income to the Workers' Benefit Fund relative to outflows and the statutory requirement under ORS 656.506 to maintain funds for no less than 12 months of projected expenditures.



Authorized Signer

Sally Coen

Printed name

August 28, 2023

Date

Mailing distribution: US Mail – WCD – S, U, AT, EG, NM, EC | agency email lists



Workers' Benefit Fund Assessment Oregon Administrative Rules Chapter 436, Division 070

Proposed, to be Effective Jan. 1, 2024

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HISTORY LINES: These rules include only the most recent "History" lines. A rule's history line shows when the rule was last revised and its effective date. To obtain a "Chapter 436 revision history index," please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

NOTE: "Revisions are marked as follows: new text | ~~deleted text~~."

436-070-0001 Authority for Rules (*Repealed*)

Stat Auth: ORS 656.726, 656.506
Stats. Impltd: ORS 656.506
Hist: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Repealed 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22

436-070-0002 Purpose (*Repealed*)

Stat Auth: ORS 656.506, 656.726(4)
Stats. Impltd: ORS 656.506
Hist: Amended 12/7/12 as WCD Admin. Order 12-063, eff. 4/1/13
Repealed 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22

436-070-0003 Purpose and Applicability

(1) Purpose.

These rules prescribe the rate of the Workers' Benefit Fund assessment under ORS 656.506 effective Jan. 1, 20~~22~~24, the method and manner for calculating the assessment rate, and the method and manner in which employers are to pay the assessment.

(2) Applicability.

(a) These rules apply to all employers.

(b) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat Auth: ORS 656.506, 656.726(4)
Stats. Impltd: ORS 656.506
Hist: Amended 10/1/19 as WCD Admin. Order 19-055, eff. 1/1/20
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-070-0005 Definitions

Unless a term is defined elsewhere in these rules, the definitions of ORS chapter 656 are incorporated by reference and made a part of these rules. For the purpose of these rules, unless the context requires otherwise:

(1) "Assessments" means the funds due from employees and employers under ORS 656.506.

(2) "Board" means the Workers' Compensation Board and includes its Hearings Division.

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

(4) "Employee" means an Oregon subject worker as defined in ORS 656.005 and any otherwise nonsubject worker for whom coverage is elected under ORS 656.039.

(5) "Employer" means a subject employer as defined in ORS 656.005, including an employer that elects coverage for an otherwise nonsubject worker under ORS 656.039.

(6) "Fund" means the Workers' Benefit Fund as created in ORS 656.506.

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DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
***Proposed* WORKERS' BENEFIT FUND ASSESSMENT**

(7) "Fund balance" means the balance of the fund after revenue and investment income has been added and expenditures have been subtracted.

Stat Auth: ORS 656.506
Stats. Impltd: ORS 656.506
Hist: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-070-0008 Administrative Review

(1) Request for hearing on proposed sanctions or civil penalties.

Any employer that disagrees with a proposed order, or proposed assessment of civil penalty, of the director under ORS 656.745, may request a hearing by the board. To request a hearing, the employer must:

- (a) Mail or deliver a written request to the division within 60 days of the mailing date of the proposed order or assessment; and
- (b) Specify, in the request, the reasons why the employer disagrees with the proposed order or assessment.

(2) Requests for hearings on other actions, including estimation actions and orders.

Any employer that disagrees with an action or order of the director under these rules, other than as described in section (1), may request a hearing by filing a request for hearing under OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Stat Auth: ORS 656.735 and 656.740
Stats. Impltd: ORS 656.704, 656.735, 656.740
Hist: Amended 10/19/05 as WCD Admin. Order 05-064, eff. 1/2/06
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-070-0010 Assessment Rate: Method and Manner of Determining

(1) The assessment owed by an employer under this rule division and ORS 656.506 must be calculated using the method in OAR 436-070-0020 and based on a rate of ~~2.2 cents~~ [proposed rate to be announced by mid-September] per hour.

(2) Factors considered by the director in developing the rate include, but are not limited to:

- (a) The estimated annual fund expenditures and revenues;
- (b) The fund balance requirements;
- (c) The estimated annual hours worked per employee;
- (d) The estimated number of employees covered by workers' compensation insurance; and
- (e) Other records relating to fund expenditures and revenues.

Stat Auth: ORS 656.506, 656.726(4)
Stats. Impltd: ORS 656.506
Hist: Amended 10/1/19 as WCD Admin. Order 19-055, eff. 1/1/20
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION**Proposed** WORKERS' BENEFIT FUND ASSESSMENT

436-070-0020 Assessments: Manner and Intervals for Filing and Payment

(1) Each pay period, an employer must retain from the moneys earned by each employee an amount equal to one-half (1/2) the assessment rate under OAR 436-070-0010 multiplied by the number of hours or parts of an hour the employee worked in that pay period.

(a) If actual hours worked are not tracked, an employer may either calculate the assessments using a flat rate, use contract information stating the number of hours an employee works, or use another reasonable method for calculating hours worked. If the flat rate method is used, the calculation must be based on 40 hours per week for employees paid weekly or biweekly, or 173.33 hours per month for employees paid monthly or semi-monthly.

(b) If the amount to be retained from an employee under this section includes a fraction of a cent, the employer must round up or down as follows:

(A) For amounts greater than or equal to one-half (1/2) of a cent, the employer must round up to the nearest whole cent.

(B) For amounts less than one-half (1/2) of a cent, the employer must round down to the nearest whole cent.

(2) Every employer must file a report of employee hours worked and remit amounts due upon a combined tax and assessment report form prescribed by the Department of Revenue. The report must be filed with the Department of Revenue:

(a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

(b) Annually as required or allowed under ORS 316.197 or 657.571.

(3) For each period in which an employer is required to remit an assessment under section (2) of this rule, the amount of the assessment must be equal to the sum of:

(a) The total amount retained from the moneys earned by each employee during the period; and

(b) An amount equal to the amount under subsection (a) of this section, to be paid by the employer.

(4) For employers required to report quarterly, reports and payments are due on or before the last day of the first month after the close of each calendar quarter. For employers that report annually, reports and payments are due on or before the last day of January following the close of each calendar year. If the due date is on a weekend or holiday, the report and payment are due the next business day.

(5) Employers who fail to timely and accurately file and remit assessments may be charged interest on all overdue balances at the rate established by ORS 82.010 and may be assessed civil penalties in accordance with OAR 436-070-0050.

(6)(a) If an employer fails to file a report, or if the director determines, based on the available data, that the report filed understates the total assessment amount due, the director may send the employer a written Failure to File Notice or Notice of Audit Findings. The notice will include a warning that failure to timely and accurately resolve all issues addressed in the written notice may result in the imposition of a civil penalty. The director may coordinate

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with the Department of Revenue and Employment Department to provide written notice of failure to file.

(b) Within 30 days of the Failure to File Notice or the Notice of Audit Findings, the employer must file an accurate report and remit the assessments due, or otherwise resolve to the satisfaction of the director all issues identified in the written notice. If an employer fails to comply with the notice, the director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.

(c) Within 30 days of the Notice of Estimation, the employer must pay the director's estimated assessment or file and remit accurate assessment due. If the employer fails to comply with the notice, the director may send to the employer an Order of Default assessing all amounts due as calculated by the director.

(d) Within 30 days of the Order of Default, the employer must remit the estimated assessment due, unless the order is timely appealed as provided in OAR 436-070-0008.

(7) Employers or the director may initiate activity to resolve reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years. No calendar year limitation applies to cases involving fraud.

(8) Notwithstanding OAR 436-001-0500, when the director determines that the department has received moneys in excess of the amount legally due and payable or that it has received moneys to which it has no legal interest, the director will refund or credit the excess amount. For amounts less than \$20, the director will refund to employers the excess amount only upon receipt of a written request from the employer or the employer's legal representative.

Stat Auth: ORS 656.506 and 82.010
Stats. Impltd: ORS 656.506 and 293.445
Hist: Amended 6/15/06 as WCD Admin. Order 06-057, eff. 7/1/06
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-070-0040 Monitoring/Auditing

(1) Employers must maintain payroll and employment records that reflect the total hours worked by all employees for the current calendar year plus three prior calendar years.

(2) Under ORS 656.726, 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.

Stat Auth: ORS 656.726
Stats. Impltd: ORS 656.506
Hist: Amended 3/23/05 as WCD Admin. Order 05-053, eff. 4/1/05
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-070-0050 Assessment of Civil Penalties

The director may assess a civil penalty under ORS 656.745(2) against an employer that does not comply with ORS chapter 656, OAR 436-070, or an order of the director.

Stat Auth: ORS 656.726(4)
Stats. Impltd: ORS 656.745
Hist: Amended 12/17/19 as Admin. Order 19-065, eff. 1/1/20
Amended 10/11/21 as WCD Admin. Order 21-054, eff. 1/1/22
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.