

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

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**Retroactive Program  
Oregon Administrative Rules  
Chapter 436, Division 075**

**Effective Jan. 1, 2016**

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| **NOTE:** New text is underlined. Deletions have a ~~strike-through~~ style.

**Historical rules:** [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf)

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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
RETROACTIVE PROGRAM**

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**OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 075**

**436-075-0001 Authority for Rules**

These rules are promulgated under the director's authority ~~contained~~ in ORS 656.726 and 656.506.

Statutory authority: ORS 656.506 and 656.726  
Statutes implemented: ORS 656.506  
Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-1990  
[Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16](#)

**436-075-0002 Purpose**

The purpose of these rules is to establish guidelines for administering disbursements made from the Retroactive Program.

Statutory authority: ORS 656.506  
Statutes implemented: ORS 656.506  
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98  
See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**436-075-0003 Applicability of Rules**

(1) These rules are effective January 1, ~~1998~~2016, and ~~shall~~ apply to all requests for reimbursement from the Retroactive Program involving benefits payable ~~pursuant to~~under:

- (a) ORS 656.204 Death
- (b) ORS 656.206 Permanent Total Disability
- (c) ORS 656.208 Death During Permanent Total Disability
- (d) ORS 656.210 Temporary Total Disability for injuries ~~prior to~~before April 1, 1974.

(2) ~~Applicable to this chapter, t~~The director may waive procedural rules as justice requires, unless otherwise obligated by statute, ~~in the director's discretion waive any procedural rules as justice so requires~~.

Statutory authority: ORS 656.209, 656.206, 656.208, 656.210, 656.236, 656.289 and 656.506  
Statutes implemented: ORS 656.204, 656.206, 656.208, 656.210, 656.276, 656.289 and 656.506  
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98  
[Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16](#)  
See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**436-075-0005 Definitions**

Except where the context requires otherwise, these rules are governed by the following definitions:

(1) ~~“Average Weekly Wage” is that wage defined in ORS 656.005~~Beneficiaries” are those persons as defined in ORS 656.005.

(2) “Child” is as defined in the laws applicable at the worker's date of injury.

(3) ~~“Compliance” means the Compliance Section of the Workers' Compensation Division of the Department of Consumer and Business Services.~~

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

(54) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(65) "Disposition" or "claim disposition" means the written agreement executed by all parties in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim.

~~(76) "Expiration of Benefits" means the end of entitlement to a benefit because of limits set forth in the statute in effect at the time of the worker's injury.~~

~~(8) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state, or an employer or employer group ~~wh~~that has been certified as self-insured under ORS 656.430.~~

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

(98) "Retroactive Program benefit" means that additional benefit paid to eligible claimants or beneficiaries to bring their benefits to a more current level.

(109) "Social Security ~~O~~ffset" means a reduction of permanent total disability benefits or fatal benefits based ~~up~~on the amount of federal social security disability benefits received by a worker or surviving spouse.

(110) "Spouse" means the husband or wifespouse of a worker. This definition also includes cohabitants ~~as defined in~~under ORS 656.226.

(121) "Statutory ~~B~~enefit" means any benefit payable to or on behalf of the injured worker ~~in accordance with~~under the law in effect at the time of the worker's injury, as modified by marital ~~and~~ dependency status changes.

(132) "Through" means inclusion of a specific date.

(143) "To" means until but not including a specific date.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.726

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

#### **436-075-0006 Administration of Rules**

~~For the purpose of~~In administering these rules, orders of ~~Compliance~~the Performance Section are deemed orders of the director.

Statutory authority: ORS 656.726

Statutes implemented: ORS 656.726

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

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**436-075-0008 Administrative Review**

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued ~~pursuant to~~under ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board ~~in accordance with~~under ORS 656.740.

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds ~~upon~~ which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Under ORS 656.704(2), any party 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 ~~as provided in~~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.

Statutory authority: ORS 656.740, 656.745, 656.750

Statutes implemented: ORS 656.704, OL 2005 ch 26, 656.740, 656.745, and 656.750

Hist: Amended 10/19/05 as WCD Admin. Order 05-065, eff. 1/2/06

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**436-075-0010 Criteria for Eligibility**

(1) The department ~~shall will~~ issue a bulletin to notify all insurers of changes in the Retroactive Program benefit levels whenever the director determines a change is necessary ~~as indicated in~~under ORS 656.506(7).

(2) Eligibility for Retroactive Program benefits ~~shall be~~is based ~~upon~~ the worker's injury date as follows:

(a) Workers or beneficiaries eligible to receive either death or permanent total disability benefits become eligible for Retroactive Program benefit increases when the benefits granted under the Retroactive Program bulletin exceed the benefits provided by the statute in effect at the time of the injury.

(b) For workers receiving temporary total disability benefits, the injury must have occurred ~~prior to~~before July 1, 1973. Workers with injuries occurring between July 1, 1973 and April 1, 1974 may qualify for benefits according to the limits defined in the Retroactive Program bulletin. Workers injured on or after April 1, 1974 are not entitled to receive Retroactive Program increases to their temporary total disability benefit.

(3) A claim ~~shall is~~ not ~~be~~ eligible for Retroactive Program benefits if all issues except compensable medical services are disposed of ~~pursuant to~~under ORS 656.236 or settled ~~pursuant to~~under ORS 656.289 ~~prior to~~before becoming eligible under section (2) of this rule.

(4) Costs for claims of subject workers of an ~~noncomplying~~ employer ~~which is noncomplying as defined in~~under ORS 656.052 are not eligible for reimbursement from the program, but remain a cost recoverable from the employer ~~as provided by~~under ORS 656.054(3).

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Statutory authority: ORS 656.506  
 Statutes implemented: ORS 656.236, 656.289 and 656.506  
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98  
[Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16](#)  
 See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**436-075-0020 Death Benefit**

(1) Death benefits ~~shall~~must be paid to eligible beneficiaries ~~pursuant to~~under ORS 656.204, and the Retroactive Program benefit schedules.

(2) Burial benefits ~~shall~~must be paid ~~pursuant to~~under ORS 656.204 (1) and the Retroactive Program benefit schedules.

(3) The statutory death benefit for injuries occurring from July 1, 1973 to April 1, 1974 will be reduced by the Social Security benefit received, up to the July 1, 1973 statutory benefit level. The amount of reduction to the statutory benefit is a Retroactive Program benefit. The insurer ~~shall~~may request reimbursement only for the adjusted Retroactive Program benefit.

(4) Benefits payable for a partial month ~~shall~~must be calculated by dividing the monthly benefit by the actual number of days in the month and multiplying that result by the number of days payable.

(5) Benefits for ~~dependents shall~~beneficiaries must be paid to the date of any status change.

(6) Remarriage allowance ~~shall~~must be paid ~~pursuant to~~under ORS 656.204 and the Retroactive Program benefit schedules.

(7) At least once every two years, the insurer must verify that all beneficiaries receiving death benefits for which the insurer may request reimbursement from the Retroactive Program are alive and remain eligible for those benefits. Insurers' questions regarding beneficiaries' status must be reasonably pertinent to the continuing eligibility of those persons for benefits.

Statutory authority: ORS 656.506  
 Statutes implemented: ORS 656.204  
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98  
[Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16](#)  
 See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**436-075-0030 Permanent Total Disability Benefit**

(1) Permanent total disability benefits ~~shall~~must be paid ~~in accordance with~~under ORS 656.206 and the benefit schedules ~~set forth~~ in the Retroactive Program bulletin.

(2) Benefit amounts payable for a partial month ~~shall~~must be calculated ~~as set forth~~ ~~in~~under 436-075-0020(4).

(3) Benefits for ~~dependents shall~~beneficiaries must be paid to the date of any status change.

(4) Any Social Security ~~O~~offset determined ~~pursuant to~~under ORS 656.209 ~~shall be~~must first ~~be~~ applied against the statutory portion of the permanent total disability benefit. Any amount of the ~~s~~Social ~~s~~Security offset that exceeds the statutory benefit ~~shall~~must be applied against the Retroactive Program benefit. The insurer ~~shall~~may request reimbursement only for that portion of the Retroactive Program benefit ~~which~~that has not been offset.

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(5) At least once every two years, the insurer must verify that all beneficiaries receiving benefits for which the insurer may request reimbursement from the Retroactive Program are alive and remain eligible for those benefits. Such "status checks" of beneficiaries may occur at the same time the insurer re-examines the permanent total disability claim under OAR 436-030-0065(1). Insurers' questions regarding beneficiaries' status must be reasonably pertinent to the continuing eligibility of those persons for benefits.

Statutory authority: ORS 656.506

Statutes implemented: ORS 656.206 and 656.209

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

### **436-075-0040      Death during Permanent Total Disability**

(1) If the injured worker dies during the period of permanent total disability, death benefits ~~shall~~must be paid to eligible beneficiaries ~~pursuant to~~under ORS 656.208, ~~and~~ ORS 656.204, and the Retroactive Program benefit schedules.

(2) Permanent total disability benefits ~~shall~~must be paid to the date of death, at which time death benefits will ~~commence~~begin. Where death benefits are not due, permanent total disability benefits ~~shall~~must be paid through the date of death.

(3) The Social Security benefit for injuries occurring between July 1, 1973 and April 1, 1974 ~~will~~must be applied ~~as set forth in~~under OAR 436-075-0020 (3).

(4) Benefit amounts payable for a partial month ~~shall~~must be calculated ~~as set forth in~~under OAR 436-075-0020(4).

(5) Burial benefits ~~shall~~must be paid ~~in accordance with~~under ORS 656.208 (1), ~~and~~ 656.204 (1), and the Retroactive Program benefit schedules. ~~;~~ h However, if the injury date is ~~prior to~~before July 1, 1973, burial benefits are due only if death results from the accidental injury causing the permanent total disability.

(6) At least once every two years, the insurer must verify that all beneficiaries receiving death benefits for which the insurer may request reimbursement from the Retroactive Program are alive and remain eligible for those benefits. Insurers' questions regarding beneficiaries' status must be reasonably pertinent to the continuing eligibility of those persons for benefits.

Statutory authority: ORS 656.506

Statutes implemented: ORS 656.204 and 656.208

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

### **436-075-0050      Temporary Total Disability**

(1) Temporary total disability benefits ~~shall~~must be paid ~~in accordance with~~under ORS 656.210, OAR 436-060-0150, and the benefit schedules ~~set forth~~ in the Retroactive Program bulletin.

(2) ~~In no case shall t~~The computation of benefits under these rules and the Retroactive Program bulletin ~~cause~~may not reduction ~~in~~ temporary total disability benefits currently being paid.

Statutory authority: ORS 656.506



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Statutes implemented: ORS 656.210

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

[Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16](#)

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

#### **436-075-0065 Dispositions**

(1) ~~Any disposition~~ of the claim by the parties ~~pursuant to~~ ORS 656.236, or settlement of the claim ~~pursuant to~~ ORS 656.289, is not eligible ~~to receive for~~ reimbursement from the Retroactive Program unless made with the ~~director's~~ prior written approval ~~of the director~~.

(2) Requests for written approval of proposed dispositions ~~should~~must include:

(a) A copy of the proposed disposition ~~which that~~ specifies the amount of the proposed contribution to be made from the Retroactive Program;

(b) A statement from the insurer indicating how the amount of the contribution was calculated; and

(c) Any other information ~~as~~ required by the director.

(3) The director will not approve the disposition for reimbursement if:

(a) The ratio of the amount requested from the program to the total amount of the disposition exceeds the percentage of current benefits due the worker from the program; or

(b) The settlement exceeds a reasonable projection of future liability.

(4) The insurer ~~shall~~must submit dispositions to the division in the format prescribed by the director.

Statutory authority: ORS 656.506

Statutes implemented: ORS 656.236 and 656.289

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

[Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16](#)

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

#### **436-075-0070 Reimbursement**

(1) Reimbursement from the Retroactive Program will be authorized by the ~~Compliance~~Performance Section on a quarterly basis.

(2) Requests for reimbursement must be mailed or delivered to ~~Compliance~~the Performance Section within 30 days after the end of each quarter to be processed in that quarterly disbursement.

(3) Requests for reimbursement mailed or delivered to ~~Compliance~~the Performance Section more than 30 days after the end of the quarter will be ~~held over and~~ processed with the next quarterly disbursement.

(4) A separate request for reimbursement ~~shall~~must be submitted for each insurer and ~~shall~~ include a signed certification that the payments reported on the request have been made in the amounts reported.



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(5) Requests for reimbursement must be submitted in the format prescribed by the director. Each request must accurately reflect the marital ~~and~~ dependency status in effect and eligible for reimbursement in the period requested.

(6) ~~Compliance~~The Performance Section will not process any request ~~failing to that does not~~ meet the requirements of section (4) or (5) of this rule, until such requirements are met.

(7) The department ~~shall~~will recover any overpayment made to an insurer as a result of an insurer error in reporting, or incorrect information submitted, on a quarterly request form.

(8) ~~In the event~~f a denied claim is found to be compensable by a ~~hearing referee~~administrative law judge, the Workers' Compensation Board, or the Court of Appeals, and that decision is reversed by a higher level of appeal, the insurer ~~shall~~will receive reimbursement for Retroactive Program benefit payments required to be made while the claim was in an accepted status.

Statutory authority: ORS 656.506

Statutes implemented: ORS 656.506

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

#### **436-075-0090 Third Party Recovery**

(1) In ~~the event of~~ a third party recovery, previously reimbursed Retroactive Program benefits are a portion of the paying agency's lien.

(2) Under ORS 656.593, when the insurer learns of third party settlement negotiations on any claim for which it has received reimbursement from the Retroactive Program, the insurer ~~should~~must notify ~~Compliance~~The Performance Section ~~in accordance with the provisions set forth in ORS 656.593.~~

(3) Remittance on recovered Retroactive Program benefits ~~shall~~must be made to the department in the quarter following the recovery in amounts determined ~~in accordance with~~under ORS 656.591 and ~~ORS~~ 656.593.

Statutory authority: ORS 656.506

Statutes implemented: ORS 656.591 and 656.593

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

#### **436-075-0100 Assessment of Civil Penalties**

Pursuant to Under ORS 656.745 the director may assess a civil penalty against an insurer for failure to comply with these rules. Penalty orders ~~shall~~will be issued ~~in accordance with~~under ORS 656.447 and 656.704 and are subject to review under OAR 436-075-0008.

Statutory authority: ORS 656.745

Statutes implemented: ORS 656.204, 656.726, 656.745 and 656.447

Hist: Amended 11-29-90 as WCD Admin. Order 23-1990, eff. 12-26-90

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

See also the *Index to Rule History*: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**BEFORE THE DIRECTOR  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION**

In the Matter of the Amendment of Oregon Administrative	)	<b>ORDER OF</b>
Rules (OAR):	)	<b>ADOPTION</b>
436-075, Retroactive Program	)	<b>No. 15-063</b>
	)	

The Director of the Department of Consumer and Business Services, under the general rulemaking authority in ORS 656.726(4), and in accordance with the procedures in ORS 183.335, amends OAR chapter 436, division 075.

On Aug. 11, 2015, the Workers' Compensation Division filed with the Secretary of State a *Notice of Proposed Rulemaking Hearing* and *Statement of Need and Fiscal Impact*. The division mailed copies of the *Notice* and *Statement* to interested persons and legislators in accordance with ORS 183.335 and OAR 436-001-0009, and posted copies to its website. The Secretary of State included notice of the public hearing in its September 2015 *Oregon Bulletin*. On Sept. 22, 2015, a public hearing was held as announced. The record remained open for written testimony through Sept. 28, 2015.

**SUMMARY OF RULE AMENDMENTS**

**These amendments:**

- Implement Enrolled House Bill 2478 by amending the definition of "Spouse" to refer to the "spouse" of a worker rather than to the "husband or wife" of a worker;
- Update other definitions;
- Require that insurers verify, at least once every two years, that beneficiaries receiving permanent total disability or death benefits are alive and remain eligible for those benefits for which the insurer may request reimbursement from the Retroactive Program; and
- Make plain language changes to improve readability.

**FINDINGS**

Having reviewed and considered the record and being fully informed, I make the following findings:

- a) The applicable rulemaking procedures have been followed.
- b) These rules are within the director's authority.
- c) The rules being adopted are a reasonable administrative interpretation of the statutes and are required to carry out statutory responsibilities.

**IT IS THEREFORE ORDERED THAT**

- 1) Amendments to OAR chapter 436, division 075 are adopted as administrative order No. 15-063 on this 12<sup>th</sup> day of October, 2015, **to be effective Jan. 1, 2016.**
- 2) A certified copy of the adopted rules will be filed with the Secretary of State.
- 3) A copy of the adopted rules with revision marks will be filed with the Legislative Counsel under ORS 183.715 within ten days after filing with the Secretary of State.

**DATED this 12<sup>th</sup> day of October, 2015.**

*/s/ John L. Shilts*

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John L. Shilts, Administrator  
Workers' Compensation Division

Under the Americans with Disabilities Act guidelines, alternative format copies of the rules will be made available to qualified individuals upon request.

If you have questions about these rules or need them in an alternate format, contact the Workers' Compensation Division, 503-947-7810.

**Distribution:** Workers' Compensation Division e-mail distribution lists, including advisory committee members and testifiers

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
10-12-15 4:32 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Department of Consumer and Business Services, Workers' Compensation Division 436  
Agency and Division Administrative Rules Chapter Number  
Fred Bruyns (503) 947-7717  
Rules Coordinator Telephone  
PO Box 14480, Salem, OR 97309-0405  
Address

To become effective 01/01/2016 Rulemaking Notice was published in the September 2015 Oregon Bulletin.

**RULE CAPTION**

Implementation of legislation affecting timely payment of benefits, penalties, and gender-neutral wording

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

436-060-0005, 436-060-0009, 436-060-0010, 436-060-0012, 436-060-0015, 436-060-0017, 436-060-0035, 436-060-0150, 436-060-0155, 436-060-0200, 436-060-0500, 436-075-0001, 436-075-0003, 436-075-0005, 436-075-0006, 436-075-0008, 436-075-0010, 436-075-0020, 436-075-0030, 436-075-0040, 436-075-0050, 436-075-0065, 436-075-0070, 436-075-0090, 436-075-0100, 436-100-0002, 436-100-0003, 436-100-0005, 436-100-0006, 436-100-0008, 436-100-0010, 436-100-0020, 436-100-0030, 436-100-0040

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 656.726(4), 656.727

**Other Authority:**

**Statutes Implemented:**

ORS chapter 656, as amended by SB 371 (2015 Or Laws, ch. 144), HB 2211 (2015 Or Laws, ch. 194), HB 2478 (2015 Or Laws, ch. 629), HB 2764 (2015 Or Laws, ch. 521), and HB 2797 (2015 Or Laws, ch. 211)

**RULE SUMMARY**

Amendments to OAR 436-060, "Claims Administration":

- Implement Enrolled Senate Bill 371 by describing how to distribute a Notice of Closure issued after the death of a worker;
- Implement Enrolled House Bill 2211 by describing the director's authority to assess civil penalties against service companies, and by replacing references to "third-party administrator" with "service company";
- Implement Enrolled House Bill 2764 by addressing penalties and attorney fees related to untimely payment of attorney fees or costs;
- Implement Enrolled House Bill 2797 by specifying that the insurer or self-insured employer must pay temporary disability benefits within 14 days of the employer's knowledge of the claim and the worker's disability; and
- Make plain language changes to improve readability.

Amendments to OAR 436-075, "Retroactive Program":

- Implement Enrolled House Bill 2478 by amending the definition of "Spouse" to refer to the "spouse" of a worker rather than to the "husband or wife" of a worker;
- Update other definitions;
- Require that insurers verify, at least once every two years, that beneficiaries receiving permanent total disability or death benefits are alive and remain eligible for those benefits for which the insurer may request reimbursement from the Retroactive Program; and

- Make plain language changes to improve readability.

Amendments to OAR 436-100, "Workers' Compensation Benefits Offset":

- Implement Enrolled House Bill 2478 by amending the definition of "Beneficiary" to refer to the "spouse" of a worker rather than to the "husband" or "wife" of a worker;
- Update other definitions; and
- Make plain language changes to improve readability.

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