

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 RETROACTIVE [RESERVE] PROGRAM

REVISION-MARKED COPY

[Bracketed 8 point text is deleted]; **bold/underlined text is added**

EFFECTIVE JANUARY 1, 1998

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 075

NOTE: Only adopted, amended, and repealed rules are included in this document:

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436-075-0002 Purpose

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

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

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

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

436-075-0003 Applicability of Rules

(1) These rules are effective [December 26, 1990] **January 1, 1998**, and shall apply to all requests for reimbursement from the Retroactive [Reserve] **Program** involving benefits payable pursuant to:

[1] **(a)** ORS 656.204 Death

[2] **(b)** ORS 656.206 Permanent Total Disability

[3] **(c)** ORS 656.208 Death During Permanent Total Disability

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[4] **(d)** ORS 656.210 Temporary Total Disability for injuries prior to April 1, 1974.

[5] ORS 656.214 Permanent Partial Disability regarding unscheduled disability for injuries prior to July 1, 1967, and other permanent partial disability awards for injuries occurring prior to July 1, 1971.]

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.209, ORS 656.206, ORS 656.208, ORS 656.210, ORS 656.236, ORS 656.289 and ORS 656.506

Stats. Implemented: ORS 656.204, ORS 656.206, ORS 656.208, ORS 656.210, ORS 656.276, ORS 656.289 and ORS 656.506

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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.
- (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.
- (4) "Department" means the Department of Consumer and Business Services.
- (5) "Director" means the director of the Department of Consumer and Business Services.
- (6) "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.
- (7) "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, an employer or employer group who has been certified as self-insured under ORS 656.430.
- (9) "Retroactive [Reserve] **Program** benefit" means that additional benefit paid to eligible claimants or beneficiaries to bring their benefits to a more current level.
- (10) "Social Security Offset" means a reduction of permanent total disability benefits or fatal benefits based upon the amount of federal social security disability benefits received by a worker or surviving spouse.
- (11) "Spouse" means the husband or wife of a worker. This definition also includes cohabitants as defined in ORS 656.226.
- (12) "Statutory Benefit" means any benefit payable to or on behalf of the injured worker in accordance with the law in effect at the time of the worker's injury, as modified by

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marital/dependency status changes.

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

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

Stat. Auth.: ORS656.726

Stats. Implemented: ORS656.726

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436-075-0008 Administrative Review

(1) Any party as defined by ORS 656.005[(20)]**(21)** aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

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

(b)The request for hearing must be filed with the administrator of the Workers' Compensation Division within 20 days of receipt by the aggrieved person of notice of the proposed order or assessment. No hearing shall be granted unless the request is [received by] **mailed or delivered to** the administrator within said 20 days of receipt of notice.

(2) Any party as described in section (1) aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a)The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is contested and is [received by] **mailed or delivered to** the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b)The hearing shall be conducted by the director or the director's designee.

(c)Any order in a contested case issued by another person on behalf of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: ORS656.740, ORS656.745, ORS656.750 and ORS183.310 thru ORS183.550

Stats. Implemented: ORS656.740, ORS656.745, ORS656.750 and ORS183.310 thru ORS183.550

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436-075-0010 Criteria for Eligibility

(1) The department shall issue a bulletin to notify all insurers of changes in the Retroactive [Reserve] Program benefit levels whenever the director determines a change is necessary as indicated in ORS 656.506⁽³⁾7.

(2) Eligibility for Retroactive [Reserve] Program benefits shall be 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 [Reserve] Program benefit increases when the benefits granted under the Retroactive [Reserve] 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 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 [Reserve] Program bulletin. Workers injured on or after April 1, 1974 are not entitled to receive Retroactive [Reserve] Program increases to their temporary total disability benefit.

[c) For workers receiving permanent partial disability benefits, the injury must have occurred prior to July 1, 1971.]

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

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

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.236, ORS 656.289 and ORS 656.506

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

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436-075-0020 Death Benefit

(1) Death benefits shall be paid to eligible beneficiaries pursuant to ORS 656.204, and the Retroactive [Reserve] Program benefit schedules.

(2) Burial benefits shall be paid pursuant to ORS 656.204 (1) and the Retroactive [Reserve] 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 [Reserve] Program benefit. The insurer shall request reimbursement only for the adjusted Retroactive [Reserve] Program benefit.

(4) Benefits payable for a partial month shall 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.

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

(6) Remarriage allowance shall be paid pursuant to ORS 656.204 and the Retroactive [Reserve] **Program** benefit schedules.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.204

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 7-1-90

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436-075-0030 Permanent Total Disability Benefit

(1) Permanent total disability benefits shall be paid in accordance with ORS 656.206 and the benefit schedules set forth in the Retroactive [Reserve] **Program** bulletin.

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

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

(4) Any Social Security Offset determined pursuant to ORS 656.209 shall be first applied against the statutory portion of the permanent total disability benefit. Any amount of the social security **offset** that exceeds the statutory benefit shall be applied against the Retroactive [Reserve] **Program** benefit. The insurer shall request reimbursement only for that portion of the Retroactive [Reserve] **Program** benefit which has not been offset.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.206 and ORS 656.209

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

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

436-075-0040 Death During Permanent Total Disability

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

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

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

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

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

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.204 and ORS 656.208

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436-075-0050 Temporary Total Disability

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

(2) In no case shall the computation of benefits under these rules and the Retroactive [Reserve] Program bulletin cause a reduction in temporary total disability benefits currently being paid.

Stat. Auth.: ORS656.506

Stats. Implemented: ORS656.210

Hist: Filed 12-22-89 as WCD Admin. Order 6-1989, eff. 1-1-90
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436-075-0060 Permanent Partial Disability

[(1) Permanent partial disability benefits shall be paid in accordance with ORS 656.214, ORS 656.216 and the benefit schedules set forth in the Retroactive Reserve bulletin.

(2) The monthly permanent partial disability payment shall be established by multiplying the weekly temporary total disability rate at the time of closure by 4.35.

(3) Benefit amounts payable for a partial month shall be calculated as in 436-075-0020 (4).]

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Repealed 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

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 reimbursement from the Retroactive [Reserve] Program unless made with the prior written approval of the director.

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

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

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

(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 [reserve] program to the total amount of the disposition exceeds the percentage of current benefits due the worker from the [reserve] program;
or

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

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

Stat. Auth.: ORS656.506

Stats. Implemented: ORS 656.236 and ORS 656.289

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436-075-0070 Reimbursement

- (1) Reimbursement from the Retroactive [Reserve] **Program** will be authorized by the Compliance Section on a quarterly basis.
- (2) Requests for reimbursement must be [received by] **mailed or delivered to** Compliance within 30 days after the end of each quarter to be processed in that quarterly disbursement.
- (3) Requests for reimbursement [received by] **mailed or delivered to** Compliance 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 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.
- (5) Requests for reimbursement must be submitted in the format prescribed by the director. Each request must accurately reflect the marital/dependency status in effect and eligible for reimbursement in the period requested.
- (6) Compliance will not process any request failing to meet the requirements of section (4) or (5), until such requirements are met.
- (7) The department shall 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 a denied claim is found to be compensable by a hearing referee, the Workers' Compensation Board, or the Court of Appeals, and that decision is reversed by a higher level of appeal, the insurer shall receive reimbursement for Retroactive [Reserve] **Program** benefit payments required to be made while the claim was in an accepted status.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

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

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436-075-0080 Alien Benefits

[Reimbursement from the Retroactive Reserve will be made at the alien benefit rate in effect for the period requested if the injured worker or beneficiary entitled to benefits pursuant to ORS 656.204 to 656.214 is an alien residing outside of the United States or its dependencies. An alien is a person who is a citizen or subject of a country other than the United States of America.]

Stat. Auth.: ORS 656.232

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

Repealed 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

436-075-0090 Third Party Recovery

- (1) In the event of a third party recovery, previously reimbursed Retroactive [Reserve] **Program** benefits are a portion of the paying agency's lien.
- (2) When the insurer learns of third party settlement negotiations on any claim for which it has received reimbursement from the Retroactive [Reserve] **Program**, the insurer should notify

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Compliance in accordance with the provisions set forth in ORS 656.593.

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

Stat. Auth.: ORS656.506

Stats. Implemented: ORS656.591 and ORS656.593

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