

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 PREFERRED WORKER PROGRAM

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

EFFECTIVE OCTOBER 1, 2001

**OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 110**

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436-110-0001 Authority for Rules

The director has adopted OAR **Chapter** 436 [-], **Division** 110 under authority of [ORS 656.530,] ORS 656.622 [(9)] and [ORS] 656.726 [(3)].

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73
Amended 3/14/73 by WCB Admin. Order 3-1973, eff. 4/1/73
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Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82
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Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
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Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
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Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96
Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0002 Purpose of Rules

(1) These rules explain what assistance and reimbursements are available from the [Reemployment Assistance] **Preferred Worker** Program, who is qualified, and how to receive assistance and reimbursements. [The Reemployment Assistance Program consists of two programs: (1) The Employer-at-Injury Program promotes the early return to work of injured workers by providing incentives to employers who return their injured workers with open claims to light-duty transitional work.]

(2) The Preferred Worker Program encourages the reemployment of workers whose on-the-job injuries have resulted in permanent disabilities and who cannot return to the [jobs] **employment** they [were doing] **had** at the time of injury **or claim for aggravation** because of those disabilities by providing incentives to [time-of-injury and new] employers.

[ED. NOTE: *New* 436-110-0002(3) has been moved from *former* 436-110-0300.]

(3) The Preferred Worker Program is a worker-option and worker-activated program. The program consists of Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, Obtained Employment Purchases, and Worksite Modification. A Preferred Worker may offer reemployment assistance to an employer.

Stat. Auth.: ORS 656.622, 656.726(4)

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Amended 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97
Amended and renumbered section (3) from OAR 436-110-0300(1st ¶), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0003 Applicability of Rules

(1) These rules apply to all requests for **Preferred Worker Program** reemployment assistance received by the division on or after the effective date of these rules. Reemployment

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assistance received as a result of a request filed and approved between June 30, 1990[,] and the effective date of these rules counts toward the maximum assistance allowed by these rules.

(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.: ORS656.622, 656.726(4)

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Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
Amended 1/21/93 as WCD Admin. Order 93-050, eff. 3/1/93
Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96
Amended 8/28/97 as WCD Admin Order 97-057, eff. 9/12/97
Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0005 Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, [Department of Consumer and Business Services,] or the administrator's delegate **for the matter**.

(2) ["Claim costs" means all benefits, including disability payments, medical services, vocational costs (except self-employment), claim disposition agreements in accordance with ORS 656.236, disputed claim settlements in accordance with ORS 656.289, administrative costs, as well as attorney fees awarded to the worker or the worker's beneficiaries.]

"Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

[(3)] **(4) "Disability" means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers' compensation claim which limits the worker from performing one or more of the worker's regular job duties.**

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

[(4)] **(6) "Division approval" means a [reemployment assistance] Preferred Worker agreement signed by an authorized division representative.**

[(5)] **(7) "Employer-at-injury" means the organization in whose employ the worker**

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sustained the injury or occupational disease[, or made the claim for aggravation].

[(6)] **(8)** "Exceptional disability" means a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury which results in impairment equal to or greater than a Class III as defined in OAR 436-035. The division shall determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries resulting in permanent disability.

[(7)] **(9)** "Fund" means the Workers' Benefit Fund.

(10) "Hire date" means the date the worker started work for the employer in the employment for which benefits are requested. When a worker returns to regular or substantially similar employment where worksite modifications are required, the hire date means the date that all modifications are in place and verified by a representative of the division.

[(8)] **(11)** "Premium" means premium which results from a calculation which takes payroll multiplied by applicable rates of the employer's individual insurer multiplied by the employer's experience rating modification less any discounts, assessments, surcharges, or taxes.

[(9)] **(12)** "Regular employment" means the [job] **employment** the worker held at the time of **the injury** OR [the job the worker held at the time of the claim reopening, or employment substantially similar in nature, duties, responsibilities, knowledge, skills and abilities] **claim for aggravation**. Regular employment which has been substantially modified as described in OAR 436-110-0380 is not regular employment for purposes of the Preferred Worker Program.

[(10)] **(13)** "**Reimbursable** [w]wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, [performance bonuses,] and reasonable value of board, rent, housing, lodging, and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. **Bonus pay shall be considered reimbursable only when provided as part of the written or verbal employment contract as a means to increase the worker's wages. End-of-the-year and other one-time bonuses paid at the employer's discretion, and safety bonuses, are not reimbursable.** Wages do not include tips, discretionary bonuses, paid leave cash-outs, employee insurance or benefits programs, employee discounts, or other forms of remuneration not included as part of the worker's gross wages. **Benefits paid as wages or cash, even if reported as part of a worker's gross wages, are not subject to reimbursement.**

[(11)] **(14)** "Worksite" means a primary work area which is **in Oregon**, already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's, [or] worker's, **or worker leasing company's client's** premises, property, and equipment used to conduct business under the employer's **or client's** direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. **If the "worksite" is mobile, it must be available in Oregon for inspection and modification.**

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Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

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Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0006 Administration of Rules

(1) Orders issued by the division to enforce [ORS 656.530 and] ORS 656.622 or these rules are orders of the director.

(2) The department maintains the financial integrity of the fund and all reimbursement is subject to the availability of funds. If the funds are too low for all reimbursements, the director has final authority to determine how the funds will be disbursed.

(3) The director may use moneys from the fund for activities to provide information about and encourage reemployment of injured workers. A maximum of \$250,000 may be used in a fiscal year, July 1 to June 30. The director must approve all expenditures. Activities include, but are not limited to:

(a) Advertisements and promotion of reemployment assistance programs and associated production costs; and

(b) Public reemployment assistance program conferences and workshops.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

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Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
Amended 1/21/93 as WCD Admin. Order 93-050, eff. 3/1/93
Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96
Amended 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97
Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0007 Reconsideration/Appeal to the Director

(1) The division will deny any request for Preferred Worker Program assistance it finds is in violation of these rules. The division has the discretion to deny a request it determines is not reasonable, practical, or feasible, or considers an abuse of the program.

[1] **(2)** Parties directly affected by a division reemployment assistance decision may request a [review] **reconsideration** by sending a written request for [review] **reconsideration** to the

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administrator no later than 60 days after the date the decision is issued. Facsimiles that are legible and complete are acceptable and will be processed the same as originals.

Reconsideration must precede a director's review.

[(2)] **(3)** The request for [review] **reconsideration** shall specify the reasons why the decision is appealed. No [review] **reconsideration** shall be granted unless the request meets the requirements of this subsection.

[(3)] **(4)** The division will [reexamine] **reconsider** the decision prior to a director's review and will notify all affected parties of its decision **upon reconsideration**.

[(4)] **(5)** If, upon [reexamination] **reconsideration**, the division upholds the original decision, [and the decision is not final as described in section (3) of this rule,] the director's review shall begin.

[(5)] **(6)** The director may require any affected party to provide information or to participate in the director's review. If the party requesting the director's review fails to participate without reasonable cause as determined by the director, the director may dismiss the review.

(7) The director's review decision will be issued in writing. The director's review decision is final and not subject to further review by any court or other administrative body.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
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Amended 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97
**Amended and renumbered section (1) from OAR 436-110-0540(11),
8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01**

436-110-0240 Insurer Participation in [Reemployment Assistance] the Preferred Worker Program

(1) The insurer of the employer at injury shall be an active participant in providing reemployment assistance. Participation includes issuing notices of the assistance available from the [Reemployment Assistance Program and administering the Employer-at-Injury Program as specified in OAR 436-110-0510, 0520 and 0540] **Preferred Worker Program**.

(2) The insurer shall notify the worker and employer at injury in writing of the reemployment assistance available from the fund. [The notice shall be in the format the director prescribes by bulletin.] A notice shall be issued:

(a) [Upon acceptance or reopening of a disabling claim;

(b) Within five days of a worker's [first release for work after claim opening and the first] release for work after the worker has been declared medically stationary by the attending physician;

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[(c)] **(b)** Upon determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and

[(d)] **(c)** Upon approval of a Claim Disposition Agreement.

[(2) The insurer shall notify the worker and employer at injury in writing of the reemployment assistance available from the fund.]

(3) Pursuant to section (2) of this rule, the Notice to the Worker shall appear in bold type and contain the following language:

The Preferred Worker Program helps Oregon's eligible injured workers get back to work. If you have permanent limitations as a result of an Oregon compensable injury, and your medical care provider has determined you will not be able to return to the employment you held at the time of your injury or aggravation because of those limitations, you may qualify as a Preferred Worker and receive reemployment assistance. To find out whether you qualify, contact the Preferred Worker Program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: (503) 947-7588, 1-800-445-3948 (toll-free from Oregon only), (503) 947-7993 (TTY), or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161 (toll-free from Oregon only), or FAX (541) 776-6246.

Or write the Preferred Worker Program at: 350 Winter Street NE, Rm 27, Salem, Oregon 97301-3879; or 1840 Barnett Road, Suite C, Medford, Oregon 97504.

(4) Pursuant to section (2) of this rule, the Notice to the Employer shall appear in bold type and contain the following language:

If your worker is unable to return to regular work because of injury-caused limitations, he or she may be eligible for the Preferred Worker Program. A Preferred Worker may offer you incentives including Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, and Worksite Modification, which you may use to re-employ the worker. To find out about the Preferred Worker Program, contact the program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: (503) 947-7588, 1-800-445-3948 (toll-free from Oregon only), (503) 947-7993 (TTY), or FAX (503) 947-7581.

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For the Medford office call: (541) 776-6032, 1-800-696-7161 (toll-free from Oregon only), or FAX (541) 776-6246.

Or write the Preferred Worker Program at: 350 Winter Street NE, Rm 27, Salem, Oregon 97301-3879; or 1840 Barnett Road, Suite C, Medford, Oregon 97504.

[(3)] **(5)** The insurer shall provide the division with [return-to-work] **Preferred Worker** information in the form and format the director prescribes [by] **in** [b] **Bulletin** [indicating whether the worker has returned to regular employment; is released to regular employment; has refused an offer of appropriate employment with the employer at injury as defined in OAR 436-110-0310(2)(c),] **139, Form 440-1503**, upon the following:

(a) Claim closure pursuant to ORS 656.268;

(b) Within 30 calendar days from the insurer's receipt of the earliest Opinion and Order of an Administrative Law Judge, Order on Reconsideration, Order on Review by the Board, decision of the Court of Appeals, or stipulation which grants initial permanent disability after the latest opening of the worker's claim; and

(c) Approval of a Claim Disposition Agreement according to ORS 656.236 and documented medical evidence indicates permanent disability exists as a result of the injury or disease, and the worker is unable to return to regular employment.

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)

Stats. Implemented: ORS 656.340(1), (2), (3); 656.622; 656.726(4)

Hist: Filed 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

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[ED. NOTE: Former 436-110-0260 has been amended and moved to new 436-110-0330.]

436-110-0260 Procedure for Insurer to Request Preferred Worker Claim Cost Reimbursement

[**Claim Cost Reimbursement** may be provided to an insurer when a Preferred Worker employed with an employer receiving Premium Exemption incurs a new compensable injury or occupational disease.

(1) The insurer shall request Claim Cost Reimbursement as follows:

(a) All requests for reimbursement shall be made within one year of the quarter within which payment was made;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin. Reimbursement documentation shall include, but is not limited to:

(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program or the fund;

(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(2) Request for reimbursement shall not include:

(a) Claim costs for any injury which did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim except for diagnostic tests, including independent medical examinations, to determine compensability of the condition;

(c) Costs incurred due to inaccurate, untimely, or improper processing of the claim and those procedures outside generally accepted claims management processes;

(d) Penalties, fines or filing fees;

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- (e) Disposition amounts in accordance with ORS 656.236 and ORS 656.289, not previously approved by the division;
- (f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program or the fund
- and
- (g) Reimbursable Employer-at-Injury Program costs.
- (3) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts shall be refunded to the division and, as applicable, future reimbursements denied if, upon audit, any of the following is found to apply:
- (a) Reimbursement has been made for any of the items specified in section (2) of this rule;
- (b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claim management procedures;
- (c) The separate payments of compensation have not been documented, as required under generally accepted accounting procedures;
- (d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;
- (e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating or dividend calculations at the time of audit or within 14 working days thereafter; or
- (f) The insurer failed to follow generally accepted claim management processes, procedures and practices.
- (4) If the conditions described in subsections (3)(c), (d), and (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.
- (5) If a claim is denied, the insurer shall receive reimbursement for claim costs, as determined by the division, according to these rules.
- (6) If an employer fails to note the "Preferred Worker" status on Form 801, or fails to send its insurer a copy of the Preferred Worker Eligibility Card, and later notifies its insurer that the injury or disease was incurred by a Preferred Worker, the insurer shall correct all records previously filed which include claim costs in any dividend, retrospective rating or any claim valuation for experience rating performed.
- (7) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for reimbursement:
- (a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition shall be submitted to the division prior to submitting the disposition to the Workers' Compensation Board for approval;
- (b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and
- (c) A request for approval of the proposed disposition shall include:
- (A) A copy of the proposed disposition which specifies the proposed assistance from the fund and contains a signature line for division approval;
- (B) A written explanation of how the calculations for the amount of assistance from the fund were made; and
- (C) Other information as required by the division.]

Stat. Auth.: ORS 656.236, 656.289, 656.307, 656.622, 656.726(4)

Stats. Implemented: ORS 656.236(6); 656.289(5); 656.307(2); 656.622(1), (2), (3), (4), (5), and (10); 656.726(4)

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and 060, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93
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Amended and renumbered to OAR 436-110-0330, 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[**ED. NOTE:** The 1st paragraph of *former* 436-110-0300 is moved to *new* 436-110-0002(3); *former* 436-110-0300(1) is amended and moved to *new* 436-110-0325(1); *former* 436-110-0300(2) is amended and moved to *new* 436-110-0330(1); *former* 436-110-0300(3) is amended and moved to *new* 436-110-0335(1); *former* 436-110-0300(4) is amended and moved to *new* 436-110-0345(1)-(3); and *former* 436-110-0300(5) is amended and moved to *new* 436-110-0350(1)-(2).]

436-110-0300 Assistance Available from the Preferred Worker Program

[The Preferred Worker Program is a worker-option and worker-activated program. The program consists of Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, Obtained Employment Purchases, and Worksite Modification. A Preferred Worker may offer reemployment assistance to an employer.

(1) **Premium Exemption** releases an employer from paying workers' compensation insurance premiums or premium assessments on a Preferred Worker during the time Premium Exemption is in effect, up to a maximum of three years from the date of first use by the worker

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during the Preferred Worker eligibility period. If a Preferred Worker has a new compensable injury or occupational disease, the claim costs will not be included in the employer's experience rating calculation. Premium Exemption may not be extended. Premium Exemption allows the following:

(a) While actively using Premium Exemption, the employer does not report, and the insurer cannot use, the Preferred Worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer is required to report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-085. The employer shall start paying insurance premiums and premium assessments when Premium Exemption ends.

(b) While Premium Exemption is active, the worker may provide a new eligible employer Premium Exemption for the remainder of the three-year Premium Exemption period.

(2) **Claim Cost Reimbursement** provides reimbursement to the insurer for claim costs when a Preferred Worker incurs a new compensable injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursements include disability benefits, medical benefits, vocational costs (except self-employment in accordance with 436-120-0720(9), Claim Disposition Agreements in accordance with ORS 656.236, disputed claim settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries and administrative costs. The administrative cost factor to be applied to claim costs shall be calculated in the manner specified in OAR 436-050-0180;

(c) The claim shall not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend; and,

(d) An insurer may request reimbursement as given in OAR 436-110-0260.

(3) **Wage Subsidy** provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage Subsidy benefits are subject to the following conditions:

(a) A Wage Subsidy is limited to a duration of six months and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability as defined in OAR 436-110-0005. For a worker with an exceptional disability, the Wage Subsidy duration is limited to one year and a monthly reimbursement rate of 75 percent.

(b) A Wage Subsidy may be interrupted for reasonable cause and extended to complete the Wage Subsidy on a whole workday basis. Reasonable cause includes, but is not limited to, personal or family illness, death in the worker's family, pregnancy of the worker or worker's spouse, a compensable injury to the worker, participation in an Employer-at-Injury Program or layoff. A layoff must be a minimum of 10 consecutive work days.

(c) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

(A) First examine the wages paid by the employer for other workers doing the same job.

(B) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted.

(C) If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement.

(d) Preferred Worker Program Wage Subsidies may not be combined with subsidies from other sources.

(e) Except as otherwise provided in these rules, a Preferred Worker may use Wage Subsidy twice during an eligibility period, once with one employer and once with a different employer.

(4) **Obtained Employment Purchases** are those items an employer requires of all workers performing the job for which the worker is employed or which are required for the worker to accept a job or continue employment. These purchases may be provided for a job with a non-subject employer in Oregon or out of state, as long as that employer complies with the appropriate workers' compensation law. All purchases become the worker's property upon employment in the job for which they are required.

(a) Obtained Employment Purchases are limited to:

(A) Instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job, as follows:

(i) Tuition, books and fees. Maximum reimbursement is \$750.

(ii) Temporary lodging, meals and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation and use of a personal vehicle shall be reimbursed at the rate of reimbursement for the department's classified employees covered under the collective bargaining agreement. Lodging, meals and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$2,500.

(B) Tools and equipment mandatory for employment, such as starter sets. Purchases shall not include items the employer normally provides, items the worker possesses, duplicate worksite modification items, or vehicles. Maximum reimbursement is \$2,000.

(C) Clothing required for the job, not including clothing the employer normally provides or the worker already possesses. Clothing does not include accessories such as jewelry, scarves, wallets, purses or other items which are not basic clothing. Maximum reimbursement is \$400.

(D) Moving expenses for a job if the new worksite is more than 50 miles from the worker's primary residence. When the worker's permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. A signed statement from the worker's medical service provider, as defined in OAR 436-010, shall be submitted to the division as evidence of the worker's inability to commute the required distance. Reimbursement is limited to:

(i) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker and the worker's family. The cost of meals, lodging, public transportation and use of a personal vehicle shall be reimbursed at the rate of reimbursement for the department's classified employees covered under the collective bargaining agreement. The worker and the worker's spouse may receive per diem for meals and lodging. The worker's dependents may receive per diem for meals. Lodging and meals are limited to a maximum period of two weeks. Reimbursement of moving expenses and mileage for one vehicle is limited to a single one-way trip.

(ii) Rental allowance for the worker's primary residence limited to first month's rent and last month's rent when required as specified in the rental agreement and non-refundable security, credit check, and utility fees, except deposits or fees for pets, telephone or television.

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(E) Initiation fees, or back dues and one month's current dues, required by a labor union; and,
(F) Occupational certification, licenses and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum reimbursement is \$500.

(b) Conditions for the use of Obtained Employment Purchases are as follows:

(A) For items as specified in paragraphs (a)(A)(i), (B), (C), (E), and (F) of this section, the employer must submit a signed list of item(s) verifying they are required of all workers performing the job for which the worker is employed. If no other workers are performing the same job, the division may conduct a local labor market survey to determine whether similar employers require the items to perform the job. If the labor market survey does not support the Obtained Employment Purchase item(s) requested, the division will determine the appropriate Obtained Employment Purchase item(s).

(B) Once the division provides an Obtained Employment Purchase item, the division will not replace that item unless the item was stolen or destroyed by nature or an act of God; or, in the case of clothing for new employment, the clothing previously provided is no longer usable. The loss must be uninsured and the division may require a police report to verify the loss.

(C) Except as otherwise provided in these rules, a Preferred Worker may use each Obtained Employment Purchase category twice during a period of eligibility, once with one employer and once with a different employer.

(D) The department may deny reimbursement for Obtained Employment Purchases it determines are not reasonable, practical or feasible for the job.

(E) A Preferred Worker who is receiving return-to-work follow-up services under OAR 436-120 may be eligible for Obtained Employment Purchases. This is the only condition under which a worker receiving vocational assistance under OAR 436-120 may be eligible for these purchases.

(5) **Worksite Modification** means altering a worksite by purchasing, modifying or supplementing equipment, or changing the work process to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases. Conditions for the use of Worksite Modification assistance are as follows:

(a) The division must approve, by authorized signature, a completed and signed Worksite Modification Agreement form, as specified in OAR 436-110-0340(4)(c) or (d), prior to any reimbursement or authorization for payment.

(b) Modifications may be provided up to three years from the date the worker returns to regular employment, becomes medically stationary, or other employment started while the worker is eligible for the Preferred Worker Program, whichever occurs last.

(c) Modifications will only be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations as defined by a medical provider. A job analysis which includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed.

(d) Modifications may be provided to allow a worker to return to regular employment, as described in OAR 436-110-0380.

(e) Modifications after June 30, 1990, are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided for a worker with an exceptional disability as defined in OAR 436-110-0005(6).

(f) A worker may use Worksite Modification assistance once with one employer and once with a second employer, or twice with the same employer if there is a job change.

(g) Modifications limited to a maximum of \$2,500 may be provided for on-the-job training under OAR 436-120 or other similar on-the-job training programs including, but not limited to, those administered by the state of Oregon Employment Department and Department of Human Resources, Vocational Rehabilitation Division, except when the employer at injury is the trainer. When the employer at injury is the trainer, a modification of up to \$25,000 may be provided. A modification will not be approved for any other type of training.

(h) When a worker's personal vehicle is being modified, the worker must provide proof of the worker's ownership, insurance coverage, and valid drivers license.

(i) Modifications must be reasonable, practical, and feasible as determined by the division. The director shall have final authority to make Worksite Modification decisions involving the use of the fund.

(j) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer.

(k) A modification may include tools, equipment, fixtures, or furnishings not customarily provided by an employer; installation of equipment or machinery; or alteration of permanent structures.

(l) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification, and consultative services consisting of engineering, architectural, ergonomic and similar services required to determine the feasibility, to recommend, to design or to perform a Worksite Modification.

(m) Rental of Worksite Modification items and consultative services require division approval and are limited to a cost of up to \$3,500 each. The cost for rental of Worksite Modification items and consultative services does not apply toward the total cost of a Worksite Modification.

(n) Modification equipment shall become the employer's property upon successful completion of a Worksite Modification agreement and employment of the worker, unless the division specifies otherwise. The division shall determine ownership of Worksite Modification equipment prior to approving an agreement and has the final authority to assign property. Exceptions to the modification becoming the employer's property include, but are not limited to:

(A) An item unique to the worker, such as a custom-designed tool to adapt the worker's prosthesis to a job-related task;

(B) An item that is mobile, portable, easily transferable, not affixed or attached to the employer's property or equipment, not integral to the employer's operations, and of greater value to the worker in order to maintain employment; and,

(C) Items installed in or on the worker's personal property or premises.

(o) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation and use of a personal vehicle necessary for a worker to participate in one or more of these required activities shall be reimbursed at the rate of reimbursement for the department's classified employees covered under the collective bargaining agreement. The cost of the services described in this subsection does not apply toward the total cost of a Worksite Modification.

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(p) If the property provided for the modification is damaged, in need of repair or lost, the division will not repair or replace the property.

(q) The employer shall not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property may result in sanctions under OAR 436-110-0900.

(r) The worker shall not dispose of the property provided for the modification while employed in work for which the modification is necessary or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property may result in sanctions under OAR 436-110-0900.]

Stat. Auth.: ORS 656.236, 656.289, 656.307, 656.622, 656.726(4)

Stats. Implemented: ORS 656.236(6), 656.289(5), 656.307(2), 656.622, 656.726(4)

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73

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Amended and renumbered 1st paragraph to OAR 436-110-0002(3); (1) to OAR 436-110-0325(1); (2) to OAR 436-110-0330(1); (3) to OAR 436-110-0335(1); (4) to OAR 436-110-0345(1)-(3); (5) to OAR 436-110-0350(1)-(2),

8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01.

436-110-0310 Eligibility and End of Eligibility for the Preferred Worker Program

(1) The eligibility requirements for an employer, except as provided in OAR 436-110-0345(1) for Obtained Employment Purchases, are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage;

(b) The employer complies with the Oregon Workers' Compensation Law; [and]

(c) The employer must offer or provide employment to an eligible Preferred Worker who is a subject Oregon worker pursuant to ORS 656.027;

(d) If the employer is a worker leasing company, it must be licensed with the division; and

[(c)] (e) The employer is not currently ineligible for Preferred Worker benefits under OAR 436-110-0900.

(2) The eligibility requirements for a worker are:

(a) The worker has an accepted disabling Oregon compensable injury or occupational disease[.]. Injuries covered by the Injured Inmate Law do not qualify;

(b) Because of injury-caused limitations, [the worker has not returned to, and] medical evidence

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indicates the worker will not be able to return to[,] regular employment as defined in OAR 436-110-0005 under the most recent disabling claim opening. **If the latest opening is a new condition opening, the entire claim will be considered for the purpose of eligibility; and**

(c) [The worker has not refused an offer of appropriate employment with the employer at injury. For the purpose of this rule, "appropriate employment" means employment for which the worker has the knowledge, skills, abilities, and physical capacities to perform the job. A job offer requiring the use of reemployment assistance by the worker is not considered an offer of appropriate employment; and

(d) The worker has permanent disability as a result of an accepted Oregon disabling injury or occupational disease by one of the following:

(A) Permanent disability awarded by a Notice of Closure, a Determination Order, Order on Reconsideration, Order of a Referee, Order on Review by the Board, a decision of the Court of Appeals or an approved stipulation;

(B) A claim closed by a Board's Own Motion or the insurer's own motion and medical documentation indicates permanent disability exists as a result of the injury or disease;

(C) A claim settled by a Claim Disposition Agreement according to ORS 656.236 and medical documentation indicates permanent disability exists as a result of the injury or disease; or

(D) Medical documentation indicates permanent disability exists as a result of the injury or disease, whether or not an order has been issued awarding permanent disability.

(3) A worker may not use Preferred Worker benefits for self-employment unless the injury which gave rise to the worker's eligibility for the Preferred Worker Program occurred in the course and scope of self-employment. In that case, the worker may use the benefits to return to the same self-employment or for employment other than self-employment.

(4) A worker may not use Preferred Worker benefits, except Worksite Modification, for regular employment or substantially similar employment except as specified in OAR 436-110-0380.

[(4)] (5) Reasons for ending Preferred Worker Program eligibility include, but are not limited to, the following:

(a) Misrepresentation or omission of information by the worker or employer to obtain assistance;

(b) Failure of the worker or employer to provide requested information or cooperate;

(c) Falsification or alteration of a Preferred Worker card or a [Reemployment Assistance] **Preferred Worker Program** [a] **Agreement**;

(d) Conviction of fraud in obtaining workers' compensation benefits;

(e) The worker releases all claim rights through a Disputed Claim Settlement in accordance with ORS 656.289;

(f) [The worker returns to regular employment without substantial worksite modification;

(g) The claim upon which eligibility was determined is subsequently denied in accordance with ORS 656.262;

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[. However, reemployment assistance costs approved prior to the denial may be reimbursed, and compensable injuries occurring prior to the denial during a period of premium exemption may qualify for claim cost reimbursement for the life of the claim, except as cited in OAR 436-110-0850];

[(h)] **(g)** The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900; [or]

[(i)] **(h)** The employer does not maintain Oregon workers' compensation insurance coverage, **except as provided in OAR 436-110-0345(1) for Obtained Employment Purchases; or**

(i) An action by the employer or worker that warrants a sanction under OAR 436-110-0900.

[(5)] **(6)** If there is an active [Reemployment Assistance] **Preferred Worker Program** [a] **Agreement**, the division will not end Preferred Worker Program eligibility until termination of the agreement if a Disputed Claim Settlement pursuant to ORS 656.289 settles that portion of the claim from which eligibility arose or the claim is subsequently denied pursuant to ORS 656.262. Premium Exemption ends either at the expiration date shown on the card or when the job ends, whichever occurs first. When this occurs, the division will issue written notification to the worker. The worker must notify all affected parties. If the job ends before the expiration date shown on the card, the Preferred Worker card must be surrendered to the division.

[(6)] **(7)** The division retains the right to reinstate Preferred Worker Program eligibility if eligibility was ended prematurely or in error, or the employer has reinstated or obtained workers' compensation insurance coverage.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

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Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0320 Preferred Worker Cards

(1) The division may issue two types of Preferred Worker cards to eligible workers. The cards identify the worker as being eligible to offer an employer Preferred Worker Program assistance. Conditions for using the Preferred Worker cards include:

(a) A worker can have only one valid Preferred Worker card at a time;

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(b) A Preferred Worker card is valid for three years from the date of issue. The three-year period cannot be interrupted or extended; and[.]

(c) A Preferred Worker card may be reissued upon loss of the original card during and for the three-year period the original card was issued.

(2) The first card issued is a *Preferred Worker Identification Card*. The worker and employer use this card to start Premium Exemption by completing the card and returning it to the division. When worker eligibility criteria are met, the division issues this card as follows:

(a) Automatically at the time of claim closure based upon insurer submission of [return-to-work] **Preferred Worker** information as specified in OAR 436-110-0240 [(3)] **(5)**;

(b) Prior to claim closure when the worker has available, immediate employment [and meets the eligibility criteria specified in OAR 436-110-0310(2)] **with an employer who meets the eligibility criteria under OAR 436-110-0310(1)**. Workers or their representatives may contact the division directly to request an eligibility determination and a Preferred Worker card[.];

(c) When notified by the worker or their representative that there is a claim closure by a Claim Disposition Agreement, a Board's Own Motion or insurer's own motion;

(d) Upon request by the worker or their representative any time after claim closure; or

(e) If, as a result of a new claim or claim reopening, a Preferred Worker meets the Preferred Worker Program eligibility criteria, the division shall issue a new *Preferred Worker Identification Card*. The later card shall be used for subsequent benefits.

(3) The second card issued is the *Preferred Worker Eligibility Card*. The division sends the Preferred Worker this card upon approval of Premium Exemption. This card shows the three-year Premium Exemption period. The worker may offer other employers Preferred Worker benefits for the remainder of the time shown on this card.

(4) The division may inactivate a Preferred Worker card if:

(a) The Preferred Worker card was issued in error; or

(b) Any reason for ending Preferred Worker Program eligibility as specified in OAR 436-110-0310 [(4)] **(5)** applies.

(5) If the division finds that a worker who has requested a Preferred Worker card is ineligible, the division shall notify the worker in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the worker's appeal rights as given in OAR 436-110-0007.

Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622

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[ED. NOTE: *New* 436-110-0325(1) is amended and moved from *former* 436-110-0300(1); *new* 436-110-0325(2) through (8) is amended and moved from *former* 436-110-0340(1).]

436-110-0325 Premium Exemption

(1) Premium Exemption releases an employer from paying workers' compensation insurance premiums and premium assessments on a Preferred Worker during the time Premium Exemption is in effect, up to a maximum of three (3) years from the date of first use by the worker during the Preferred Worker eligibility period. Premium Exemption may not be extended. Premium Exemption allows the following:

(a) While actively using Premium Exemption, the employer does not report, and the insurer cannot use, the Preferred Worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer is required to report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-070. The employer shall start paying insurance premiums and premium assessments when Premium Exemption ends; and

(b) While Premium Exemption is active, the worker may provide a new eligible employer Premium Exemption for the remainder of the three-year Premium Exemption period.

(2) Premium Exemption must be activated in order to use Claim Cost Reimbursement and Wage Subsidy. Requirements regarding Premium Exemption and Obtained Employment Purchases are provided in OAR 436-110-0345(5).

(3) Premium Exemption is activated as follows:

(a) When a worker issued a Preferred Worker Identification Card accepts employment with Premium Exemption requested, the worker and employer shall complete the Preferred Worker Identification Card. The card must be completed by the worker and the employer and sent to the division within 90 days of the worker's hire date. Upon division approval, Premium Exemption will begin on the hire date;

(b) When a potentially eligible worker without a Preferred Worker Identification Card accepts employment with Premium Exemption requested, the worker shall send a written request to the division, or call the division, within 90 days of the worker's hire date. Upon the division determining the worker eligible as specified in OAR 436-110-0310, the division will issue a Preferred Worker Identification Card. The card must be completed by the worker and employer and sent to the division within 90 days of the date of issue. Premium Exemption will begin on the hire date as defined in OAR 436-110-0005;

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(c) If a worker returns to regular or substantially similar employment, the job for which Preferred Worker benefits are requested must meet "substantial modification" criteria as determined by the division in accordance with OAR 436-110-0380. The Preferred Worker Identification Card must be completed by the worker and employer and sent to the division within 90 days of the date the division determines the job to be substantially modified. The worker will be notified of the determination date. Upon division approval, Premium Exemption will begin on the hire date as defined in OAR 436-110-0005; and

(d) In calculating the 90-day period under this section, the hire date will not be included, and if the 90th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 90-day period.

(4) If the division does not approve Premium Exemption, the division shall notify the worker and employer in writing. Such notice shall provide the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(5) Upon approval of Premium Exemption, the division will issue the worker a Preferred Worker Eligibility Card which shows the Premium Exemption start and end dates. The division will also issue a Notice of Premium Exemption to the employer, the employer's insurer, and the insurer of the employer at injury.

(6) The worker may use a Preferred Worker Eligibility Card to obtain new employment and to provide subsequent employers with Premium Exemption for the remainder of the three-year Premium Exemption period.

(7) Employers who subsequently employ a Preferred Worker shall photocopy the Preferred Worker Eligibility Card as evidence of Premium Exemption, and distribute copies as follows:

(a) Send one copy to their insurer as notice that a Preferred Worker is employed using Premium Exemption;

(b) Keep one copy on file; and

(c) Return the card to the worker.

(8) If a Preferred Worker incurs a compensable injury or occupational disease during the Premium Exemption period, the employer shall notify its insurer of the injury and either check the appropriate box on Form 801 or write "Preferred Worker" in the left-hand margin of the form, and provide a copy of the worker's Preferred Worker Eligibility Card. If the employer fails to note the Preferred Worker status on Form 801, or fails to send a copy of the Preferred Worker Eligibility Card, the employer shall notify the insurer as soon as possible that the injury or disease was incurred by a Preferred Worker.

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Stats. Implemented: ORS656.622

Hist.: Amended and renumbered section (1) from OAR436-110-0300(1), (2)-(8) from OAR436-110-0340(1), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[ED. NOTE: *New* 436-110-0330(1) is amended and moved from *former* 436-110-0300(2); *new* 436-110-0330(2) through (7) is amended and moved from *former* 436-110-0260.]

436-110-0330 Claim Cost Reimbursement

(1) Claim Cost Reimbursement provides reimbursement to the insurer for claim costs when a Preferred Worker files a claim for injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursable claim costs include disability benefits, medical benefits, vocational costs in accordance with OAR 436-120-0720(9), Claim Disposition Agreements in accordance with ORS 656.236, Disputed Claim Settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries, and administrative costs;

(c) Reimbursable claims costs for denied claims include costs incurred up to the date of denial, but are limited to benefits the insurer is obligated to pay under ORS 656 and diagnostic tests, including insurer medical examinations necessary to determine compensability of the claim;

(d) The administrative cost factor to be applied to claim costs will be as published in Bulletin 316; and

(e) The claim shall not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend.

(2) The insurer shall request Claim Cost Reimbursement as follows:

(a) All requests for reimbursement shall be made within one year of the quarter within which payment was made;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin; and

(c) Reimbursement documentation shall include, but not be limited to:

(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program, or the fund;

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(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(3) Requests for reimbursement shall not include:

(a) Claim costs for any injury which did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim;

(c) Costs incurred due to inaccurate, untimely, unreasonable, or improper processing of the claim;

(d) Penalties, fines or filing fees;

(e) Disposition amounts in accordance with ORS 656.236 (CDA) and 656.289 (DCS) not previously approved by the division;

(f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program, or the fund; or

(g) Reimbursable Employer-at-Injury Program costs.

(4) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts shall be refunded to the division and, as applicable, future reimbursements denied if, upon audit, any of the following is found to apply:

(a) Reimbursement has been made for any of the items specified in section (3) of this rule;

(b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented;

(c) The separate payments of compensation have not been documented;

(d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;

(e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating, or dividend calculations at the time of audit or within 14 working days thereafter.

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(5) If the conditions described in subsections (4)(a) through (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) If an employer fails to note the "Preferred Worker" status on Form 801, or fails to send its insurer a copy of the Preferred Worker Eligibility Card, and later notifies its insurer that the injury or disease was incurred by a Preferred Worker, the insurer shall correct all records previously filed which include claim costs in any dividend, retrospective rating, or any claim valuation for experience rating performed.

(7) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for reimbursement:

(a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition shall be submitted to the division prior to submitting the disposition to the Workers' Compensation Board for approval;

(b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and

(c) A request for approval of the proposed disposition shall include:

(A) The original proposed disposition, containing appropriate signatures and appropriate signature lines for division and Workers' Compensation Board approval, which specifies the proposed assistance from the fund;

(B) A written explanation of how the calculations for the amount of assistance from the fund were made; and

(C) Other information as required by the division.

Stat. Auth.: ORS656.726(4), 656.622

Stats. Implemented: ORS656.622

Hist.: Amended and renumbered section (1) from OAR436-110-0300(2), (2)-(7) from OAR436-110-0260, 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[ED. NOTE: New 436-110-0335(1) is amended and moved from former 436-110-0300(3); new 436-110-0335(2) is amended and moved from former 436-110-0340(2).]

436-110-0335 Wage Subsidy

(1) Wage Subsidy provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage Subsidy benefits are subject to the following

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conditions:

(a) A Wage Subsidy is limited to a duration of 183 calendar days and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability as defined in OAR 436-110-0005. For a worker with an exceptional disability, the Wage Subsidy duration is limited to 365 calendar days and a monthly reimbursement rate of 75 percent;

(b) A Wage Subsidy Agreement may be interrupted once for reasonable cause and extended to complete the Wage Subsidy Agreement on a whole workday basis. Reasonable cause includes, but is not limited to, personal or family illness, death in the worker's family, pregnancy of the worker or worker's spouse, a compensable injury to the worker, participation in an Employer-at-Injury Program, or layoff. A layoff must be a minimum of 10 consecutive work days. A period of time during which the employer is without workers' compensation insurance coverage is not "reasonable cause," and no extension will be granted;

(c) A Preferred Worker's pay structure must be the same as the pay structure for other workers employed in similar jobs by the employer;

(d) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

(A) First, examine the wages paid by the employer for other workers doing the same job;

(B) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted; and

(C) If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement;

(e) Preferred Worker Program Wage Subsidies may not be combined with subsidies from other sources;

(f) Except as otherwise provided in these rules, a Preferred Worker may use Wage Subsidy twice during an eligibility period, once with one employer and once with a different employer; and

(g) If the worker's employer changes during the Wage Subsidy Agreement period due to a sale of the business, incorporation, or merger, the agreement can be transferred to the new employer by an addendum to the agreement approved by the division as long as the worker's job remains the same and the new employer is eligible under OAR 436-110-0310.

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(2) A Wage Subsidy may be requested by a worker and employer and the employer reimbursed as follows:

(a) A Wage Subsidy Agreement must be completed and signed by the worker and employer and submitted to the division. The agreement must be sent to the division within 90 days of the worker's hire date, except when Premium Exemption is activated under OAR 436-110-0325(3)(b). In calculating the 90-day period, the hire date will not be included, and if the 90th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 90-day period. Upon division approval, the Wage Subsidy will begin on the worker's hire date;

(b) Upon approval of the Wage Subsidy Agreement, the division will send a copy of the Agreement to the worker and a copy of the agreement with a Wage Subsidy Reimbursement Request form to the employer;

(c) If the division does not approve the Wage Subsidy Agreement, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the applicable rule(s), and the appeal rights as given in OAR 436-110-0007;

(d) The employer may request reimbursement based on the wage agreed to on the Wage Subsidy Agreement form or the wage paid the worker, whichever is less. Wages subject to reimbursement must have been paid the worker. An employer may request reimbursement, interruption, or extension of a Wage Subsidy for a part of a day the worker worked, but the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the Wage Subsidy;

(e) Requests for reimbursement shall be made no more frequently than once every two weeks. A completed and signed Wage Subsidy Reimbursement Request form must be submitted to the division with a copy of the worker's payroll records. The payroll record shall state the dates (daily or weekly), hours, wage rate, and the worker's gross wage. Payroll records shall be a legible copy and compiled in accordance with generally accepted accounting procedures; and

(f) All requests for reimbursement shall be made within one year of the Wage Subsidy Agreement termination date.

Stat. Auth.: ORS 656.726(4), 656.622

Stats. Implemented: ORS 656.622

Hist.: Amended and renumbered section (1) from OAR 436-110-0300(3), (2) from OAR 436-110-0340(2), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[ED. NOTE: Former 436-110-0340(1) is amended and moved to new 436-110-0325; former 436-110-0340(2) is amended and moved to new 436-110-0335; former 436-110-0340(3) is amended and moved to new 436-110-0345; former 436-110-0340(4) is amended and moved to new 436-110-0350.]

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436-110-0340 Procedure for a Worker and Employer to Use the Preferred Worker Program

[The following procedures are to be used to access the Preferred Worker Program. Materials may be sent by facsimile. Facsimiles that are legible and complete are acceptable and will be processed the same as originals.

(1) **Premium Exemption** must be activated in order to use Claim Cost Reimbursement and Wage Subsidy. Requirements regarding Premium Exemption and Obtained Employment Purchases are given in subsection (3)(c) of this rule.

(a) Premium Exemption is activated as follows:

(A) When a worker issued a Preferred Worker Identification Card accepts employment with Premium Exemption requested, the worker and employer shall complete the Preferred Worker Identification Card. The card must be signed and dated by the worker and employer and sent to the division within 90 days of the date the worker starts work. Upon division approval, Premium Exemption will begin the date the worker started work;

(B) When a potentially eligible worker without a Preferred Worker Identification Card accepts employment with Premium Exemption requested, the worker shall send a written request to the division, or call the division, within 90 days of the date the worker starts work. Upon the division determining the worker eligible as specified in OAR 436-110-0310, the division will issue a Preferred Worker Identification Card. The card must be completed by the worker and employer and sent to the division within 90 days of the date of issue. Premium Exemption will begin the date the worker started work; or,

(C) When a worker with an open claim accepts employment and a Preferred Worker Identification Card is subsequently issued, the card must be signed and dated by the worker and employer and sent to the division within 90 days of the date the card was issued. Upon division approval, Premium Exemption will begin either the date the card was issued or the date the worker started work, whichever is later.

(b) If the division does not approve Premium Exemption, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(c) Upon approval of Premium Exemption, the division will issue the worker a Preferred Worker Eligibility Card which shows the Premium Exemption start and end dates. The division will also issue a Notice of Premium Exemption to the employer, the employer's insurer and the insurer of the employer at injury;

(d) The worker may use a Preferred Worker Eligibility Card to obtain new employment and to provide subsequent employers with Premium Exemption for the remainder of the three-year Premium Exemption period;

(e) Employers who subsequently employ a Preferred Worker shall photocopy the Preferred Worker Eligibility Card as evidence of Premium Exemption, and distribute copies as follows:

(A) Send one copy to their insurer as notice that a Preferred Worker is employed using Premium Exemption;

(B) Keep one copy on file; and

(C) Return the card to the worker.

(f) If a Preferred Worker incurs a compensable injury or occupational disease during the Premium Exemption period, the employer shall notify its insurer of the injury and either check the appropriate box on Form 801 or write "Preferred Worker" in the left-hand margin of the form, and provide a copy of the worker's Preferred Worker Eligibility Card. If the employer fails to note the Preferred Worker status on Form 801, or fails to send a copy of the Preferred Worker Eligibility Card, the employer shall notify the insurer as soon as possible that the injury or disease was incurred by a Preferred Worker.

(2) A **Wage Subsidy** may be requested by a worker and employer and the employer reimbursed as follows:

(a) A Wage Subsidy Agreement must be completed and signed by the worker and employer and submitted to the division. The agreement must be sent to the division within 90 days of the date the worker starts work, except as specified in paragraph (1)(a)(B) and (C) of this section. Upon division approval, the Wage Subsidy will begin either the date the worker started work, or the date Premium Exemption is approved as provided in subsection (1)(a) of this rule;

(b) Upon approval of the Wage Subsidy, the division will send a copy of the agreement to the worker and a copy of the agreement with a Wage Subsidy Reimbursement Request form to the employer;

(c) If the division does not approve the Wage Subsidy, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007;

(d) The employer may request reimbursement based on the wage agreed to on the Wage Subsidy Agreement form or the wage paid the worker, whichever is less. Wages subject to reimbursement must have been paid the worker. Reimbursement shall be on a whole workday basis. An employer may request reimbursement, interruption or extension of a Wage Subsidy for a part of a day the worker worked; the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the Wage Subsidy; and

(e) Requests for reimbursement shall be made no more frequently than once every two weeks. A Wage Subsidy Reimbursement Request form must include a copy of the worker's payroll records. The payroll record shall state the dates (daily or weekly), hours, wage rate and the worker's gross wage. Payroll records shall be a legible copy and compiled in accordance with generally accepted accounting procedures.

(3) **Obtained Employment Purchases** may be requested by a Preferred Worker as follows:

(a) The worker shall call or write the division directly for assistance in receiving Obtained Employment Purchases;

(b) The Obtained Employment Purchase Agreement form must be completed and signed by the worker and employer and submitted to the division;

(c) Premium Exemption must be active and in effect in order to use Obtained Employment Purchases, except as follows:

(A) If purchase(s) are necessary prior to the date the worker is scheduled to start work and thereby activate Premium Exemption, the worker and employer must submit the Preferred Worker Identification Card to the division along with the Obtained Employment Purchase Agreement form;

(B) If purchase(s) are necessary prior to the date the worker is scheduled to start work and Premium Exemption has previously been activated, the employer must submit a letter of intent to hire;

(C) Paragraphs (A) and (B) of this subsection do not apply to workers receiving vocational assistance under OAR 436-120. These workers may only request Obtained Employment Purchases after the date the worker starts work as described in OAR 436-110-0300(4)(b)(E); or

(D) If Obtained Employment Purchases are to be used with a non-subject employer in Oregon or out of state, Premium Exemption is not activated. The employer must comply with the appropriate workers' compensation law.

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(d) Upon division approval, the division will send a copy of the agreement and, if applicable, a completed Authorization for Payment form or other instrument of payment;

(e) A worker, employer, vocational assistance provider or insurer may request reimbursement by submitting to the division a legible copy of an invoice or receipt indicating "paid" for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid; and

(f) If the division does not approve the Obtained Employment Purchase, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(4) A **Worksite Modification** may be requested by a worker and costs reimbursed as follows:

(a) The worker and employer may develop a Worksite Modification without division assistance or may contact the division directly for Worksite Modification assistance.

(b) Upon contact from the worker or employer, the division will provide instruction on how to proceed with the modification. The division may schedule an on-site visit to assist in identifying appropriate forms of modification;

(c) When the cost of the modification is \$2,500 or less, a Worksite Modification Agreement limited to \$2,500 form must be completed and signed by the worker and employer and sent to the division. The division may request additional support information;

(d) When the cost of the modification is over \$2,500, the division will issue a Worksite Modification Agreement form upon determination that the modification is appropriate.

(e) Upon division approval, the division will send copies of the agreement to the employer and worker. The division will send the party purchasing the modification an Authorization for Payment form or other instrument of payment approved by the director.

(f) The worker, employer or insurer may request reimbursement by submitting to the division a legible copy of an invoice or receipt indicating "paid" for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and

(g) If the division does not approve the Worksite Modification, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(6) Preferred Worker Program costs may be reimbursed, an Authorization for Payment form may be issued or other instrument of payment approved by the director.

(7) The department shall not purchase directly or otherwise assume responsibility for Worksite Modifications or Obtained Employment Purchases.

(8) Reimbursed costs shall not be charged by the insurer to the employer as claim costs or by any other means. Whenever reimbursement is denied, the insurer shall not charge the costs of the assistance to the worker or employer, except when agreed to between the employer and insurer, on an individual case basis, prior to the provision of assistance.

(9) If the cost for a single item, except for a chair, is over \$2,500, three competitive quotes shall be obtained. If a chair costs over \$1,000, three competitive quotes shall be obtained. If three quotes are not available, documentation of efforts to obtain three quotes shall be provided. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to, past vendor performance, delivery time, and vendor availability to service or maintain the item.

(10) All requests for reimbursement shall be made within one year of the agreement termination date.

(11) The director may waive the time provisions of subsections (1)(a), (2)(a), and section (10) of this rule if the time frames were not met due to:

- (a) Department, insurer, or rehabilitation counselor error or omission; or
- (b) There is evidence the item(s) were sent but not received by the division.]

Stat. Auth.: ORS 656.236, 656.289, 656.307, 656.622, 656.726(4)

Stats. Implemented: ORS 656.236(6), 656.289(5), 656.307(2), 656.622, 656.726(4)

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73
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WCD Admin. Order 93-050, eff. 3/1/93
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Amended and renumbered from OAR 436-110-0400, 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97
Amended and renumbered section (1) to OAR 436-110-0325; (2) to OAR 436-110-0335; (3) to OAR 436-110-0345; (4) to OAR 436-110-0350; 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[**ED. NOTE:** New 436-110-0345(1), (2), and (3) are amended and moved from former 436-110-0300(4); new 436-110-0345(4) through (8) are amended and moved from former 436-110-0340(3).]

436-110-0345 Obtained Employment Purchases

(1) An Obtained Employment Purchase is assistance necessary for a worker to accept a job or continue employment. If the employer pays for the same assistance for

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other workers performing the same job, it does not qualify as an Obtained Employment Purchase. These purchases may be provided for a job with a non-subject employer in Oregon, as long as that employer complies with the appropriate workers' compensation law. All purchases become the worker's property upon employment in the job for which they are required.

(2) Obtained Employment Purchases are limited to:

(a) Tuition, books, and fees for instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job. Maximum reimbursement is \$1000;

(b) Temporary lodging, meals, and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation, and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Lodging, meals, and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$500;

(c) Tools and equipment mandatory for employment, such as starter sets. Purchases shall not include items the worker possesses, duplicate worksite modification items, or vehicles. Maximum reimbursement is \$2,000;

(d) Clothing required for the job, not including clothing the worker already possesses. Clothing does not include accessories such as jewelry, scarves, wallets, purses, or other items which are not basic clothing. Maximum reimbursement is \$400;

(e) Moving expenses for a job if the new worksite is in Oregon and more than 50 miles from the worker's primary residence. When the worker's permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. Moving expenses are limited to one use per eligibility. Reimbursement is limited to:

(A) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker. The cost of meals, lodging, public transportation, and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Reimbursement of lodging and meals are limited to a maximum period of two weeks. Reimbursement of mileage for one personal vehicle is limited to a single one-way trip; and

(B) Rental allowance for the worker's primary residence limited to first month's rent as specified in the rental agreement, non-refundable deposit in an amount not to exceed the first month's rent, and a required credit check for that residence;

(f) Initiation fees, or back dues and one month's current dues, required by a labor

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union; and

(g) Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum reimbursement is \$500.

(3) Conditions for the use of Obtained Employment Purchases are as follows:

(a) Except for moving expenses, the worker and employer must submit a completed *Obtained Employment Purchase Agreement* listing item(s) that are required of all workers performing the job for which the worker is employed. If no other workers are performing the same job, the division may conduct a local labor market survey to determine whether similar employers require the items to perform the job. If the labor market survey does not support the Obtained Employment Purchase item(s) requested, the division will determine the appropriate Obtained Employment Purchase item(s);

(b) Once the division provides an Obtained Employment Purchase item, the division will not replace that item unless the item was stolen or destroyed by nature or an act of God or, in the case of clothing for new employment, the clothing previously provided is no longer usable. The loss must be uninsured and the division may require a police report to verify the loss;

(c) Except as otherwise provided in these rules, a Preferred Worker may use each Obtained Employment Purchase category twice during a period of eligibility, once with one employer and once with a different employer; and

(d) A Preferred Worker who is receiving return-to-work follow-up services under OAR 436-120 may be eligible for Obtained Employment Purchases. This is the only condition under which a worker receiving vocational assistance under OAR 436-120 may be eligible for these purchases.

(4) Obtained Employment Purchases may be requested by a Preferred Worker as follows:

(a) The worker shall call or write the division directly for assistance in receiving Obtained Employment Purchases; and

(b) The *Obtained Employment Purchase Agreement* form must be completed and signed by the worker and employer and submitted to the division. If the request is for moving expenses only, the employer's signature is not required.

(5) Premium Exemption must be active on the worker's hire date in order to use Obtained Employment Purchases. Obtained Employment Purchases will only be provided after the worker's hire date, except as follows:

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(a) If purchase(s) are necessary prior to the worker's hire date and prior to activation of Premium Exemption, the worker and employer must submit the completed and signed Preferred Worker Identification Card to the division along with the Obtained Employment Purchase Agreement form;

(b) If purchase(s) are necessary prior to the worker's hire date and Premium Exemption has previously been activated, the employer may be required to submit a letter of intent to hire along with the Obtained Employment Purchase Agreement;

(c) Subsections (a) and (b) of this section do not apply to workers receiving vocational assistance under OAR 436-120. These workers may only request Obtained Employment Purchases for purchases made after the worker's hire date; or

(d) If Obtained Employment Purchases are to be used with a non-subject employer in Oregon, Premium Exemption is not activated. The employer must comply with the appropriate workers' compensation law.

(6) Upon division approval, the division will send a copy of the agreement and, if applicable, a completed Authorization for Payment form or other instrument of payment.

(7) A worker, employer, vocational assistance provider, or insurer may request reimbursement by submitting to the division a legible copy of an invoice or receipt showing payment has been made for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid.

(8) If the division does not approve the Obtained Employment Purchase, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(9) Costs of Obtained Employment Purchases may be paid by reimbursement, by an Authorization for Payment, or by other instrument of payment approved by the director.

(10) The division shall not purchase directly or otherwise assume responsibility for Obtained Employment Purchases.

(11) Reimbursed costs shall not be charged by the insurer to the employer as claim costs or by any other means.

(12) All requests for reimbursement shall be made within one year of the Obtained Employment Purchase Agreement end date.

Stat. Auth.: ORS 656.726(4), 656.622

Stats. Implemented: ORS 656.622

Hist.: Amended and renumbered sections (1)-(3) from OAR 436-110-0300(4); (4)-(8) from OAR 436-110-0340(3),
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0300(5); *new* 436-110-0350(3) is amended and moved from *former* 436-110-0340(4).]

436-110-0350 Worksite Modification

(1) Worksite Modification means altering a worksite in Oregon, or available for inspection and modification in Oregon, by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases.

(2) Conditions for the use of Worksite Modification assistance are as follows:

(a) The division must approve, by authorized signature, a completed and signed Worksite Modification Agreement form, as specified in section (3) of this rule, prior to any reimbursement or Authorization for Payment;

(b) Modifications may be provided for requests received within three years from the following:

(A) The hire date of the Preferred Worker; or

(B) The date the worker returns to regular employment or substantially similar employment if the employment begins prior to claims closure or within three years after claim closure;

(c) Modifications will be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations. In order to determine appropriate Worksite Modifications, the Reemployment Assistance Unit consultants have discretion to use reports by a medical provider specific to the worker, specific documented "best practices" described by a medical provider or authority, and their own professional judgment and experience;

(d) A job analysis which includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed;

(e) Modifications may be provided to allow a worker to return to regular employment, as described in OAR 436-110-0380;

(f) A worker may use Worksite Modification assistance once with one employer and once with a second employer, or twice with the same employer if there is a job change;

(g) Modifications after June 30, 1990, are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided for a worker with an exceptional disability as defined in OAR 436-110-0005;

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(h) Modifications not to exceed \$1,000 may be provided which would reasonably be expected to prevent further injury or exacerbation of the worker's accepted condition. Appropriateness of this type of modification will be determined by a Reemployment Assistance Consultant based upon his or her professional judgment and experience, reports by a medical provider specific to the worker, or specific documented "best practices" described by a medical provider or authority. Costs of the modification(s) are included in the calculation of the total Worksite Modification costs;

(i) Modifications limited to a maximum of \$2,500 may be provided for on-the-job training under OAR 436-120 or other similar on-the-job training programs including, but not limited to, those administered by the state of Oregon Employment Department and Department of Human Resources, Vocational Rehabilitation Division, except when the employer at injury is the trainer. When the employer at injury is the trainer, a modification of up to \$25,000 may be provided. A modification will not be approved for any other type of training;

(j) When a vehicle is being modified, the vehicle owner must provide proof of ownership and insurance coverage. The worker must have a valid driver license;

(k) Rented or leased vehicles and other equipment will not be modified;

(l) Modifications must be reasonable, practical, and feasible, as determined by the division. The director shall have final authority to make Worksite Modification decisions involving the use of the fund;

(m) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer;

(n) A modification may include tools, equipment, fixtures, or furnishings not customarily provided by an employer, installation of equipment or machinery, or alteration of permanent structures;

(o) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification, and consultative services consisting of engineering, architectural, ergonomic, and similar services required to determine the feasibility, to recommend, to design, or to perform a Worksite Modification;

(p) Rental of Worksite Modification items and consultative services require division approval and are limited to a cost of up to \$3,500 each. The cost for rental of Worksite Modification items and consultative services does not apply toward the total cost of a Worksite Modification;

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(q) Modification equipment shall become the property of the employer, worker, or worker leasing company's client on the "end date" of a Worksite Modification Agreement or when the worker's employment ends, whichever occurs first. The division shall determine ownership of Worksite Modification equipment prior to approving an agreement and has the final authority to assign property. When assigning ownership of equipment the division will consider several factors including but not limited to the following:

(A) Whether it is unique to the worker, employer, or client;

(B) Whether it is mobile, portable, and easily transferable;

(C) Whether it is integral to the employer's or client's business operation;

(D) Whether it is attached to the employer's or client's property, premises, or equipment; and

(E) Whether it is installed in or on the worker's personal property or premises;

(r) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation, and use of a personal vehicle necessary for a worker to participate in one or more of these required activities shall be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. The cost of the services described in this subsection does not apply toward the total cost of a Worksite Modification;

(s) If the property provided for the modification is damaged, in need of repair, or lost, the division will not repair or replace the property;

(t) The employer shall not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property, may result in sanctions under OAR 436-110-0900; and

(u) The worker shall not dispose of the property provided for the modification while employed in work for which the modification is necessary or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) A Worksite Modification may be requested by a worker and costs reimbursed as follows:

(a) The worker and employer may develop a Worksite Modification without division assistance or may contact the division directly for Worksite Modification assistance;

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(b) Upon contact from the worker or employer, the division will provide instruction on how to proceed with the modification. The division may schedule an on-site visit to assist in identifying appropriate forms of modification;

(c) When the cost of the modification is \$2,500 or less, a *Worksite Modification Agreement (Limited to \$2,500)* form may be completed and signed by the worker and employer and sent to the division. The division may request additional support information;

(d) When the cost of the modification is over \$2,500, the division will issue a *Worksite Modification Agreement* form upon determination that the modification is appropriate;

(e) Upon division approval, the division will send copies of the agreement to the employer and worker. The division will send the party purchasing the modification an *Authorization for Payment* form or other instrument of payment approved by the director;

(f) The worker, employer, or insurer may request reimbursement by submitting to the division a legible copy of an invoice or receipt indicating "paid" for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and

(g) If the division does not approve the *Worksite Modification*, the division shall notify the worker and employer in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.

(4) Costs of *Worksite Modifications* may be paid by reimbursement, an *Authorization for Payment*, or by other instrument of payment approved by the director.

(5) The division shall not purchase directly or otherwise assume responsibility for *Worksite Modifications*.

(6) Reimbursed costs shall not be charged by the insurer to the employer as claims costs or by any other means.

(7) If the cost for a single item, except for a chair, is over \$2,500, three (3) competitive quotes shall be obtained. If a chair costs over \$1,000, three (3) competitive quotes shall be obtained. Quotes are competitive when they are from three different vendors and the items being quoted meet the same specifications. If three competitive quotes are not available, documentation of efforts to obtain three competitive quotes shall be provided. The lowest quote shall normally be selected. However, other criteria may be considered including , but not limited to, past vendor performance, delivery time, and vendor availability to service or maintain the item.

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(8) All requests for reimbursement shall be made within one year of the Worksite Modification Agreement termination date.

Stat. Auth.: ORS 656.726(4), 656.622

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered sections (1)-(2) from OAR 436-110-0300(5); (3) from OAR 436-110-0340(4), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0380 Return to Regular Employment

Worksite Modification may be provided to allow a worker to return to regular employment **or employment substantially similar in nature, duties, responsibilities, knowledge, skills, and abilities**, regardless of the worker's eligibility for the Preferred Worker Program.

(1) If the division determines the modification is not substantial as defined in section (3) of this rule, [the division will not issue the worker] a *Preferred Worker Identification Card* [If the worker already has an Identification Card, it will] **cannot** be activated.

(2) If the division determines the modification is substantial as defined in section (3) of this rule and the worker does not have a *Preferred Worker Identification Card*, the division will issue a card after the modification is in place. If the worker already has an Identification Card, it [will] **may** be activated.

(3) The division shall determine a substantial modification based upon **the extent of the modifications necessary to accommodate** the worker's permanent limitations from compensable Oregon injuries [in relation to the required job duties and the extent of the modifications necessary to accommodate the worker's limitations resulting from the injuries]. **The modifications provided must be sufficient for the worker to perform all required job duties within these restrictions.** The modification is "substantial" if any one of the factors given in subsections (a), (b), and (c) of this rule apply. When making its decision, the division may consider other factors in addition to whether the modification significantly impacts the following:

- (a) Changes how the worker performs essential job duties;
- (b) Reduces the physical exertion required; or
- (c) Affects the employer's work process.

(4) The provision of the following Worksite Modification items or similar items by themselves do not constitute a substantial modification:

- (a) Ergonomic chair;
- (b) Anti-fatigue mat;
- (c) Slant board;

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- (d) [Telephone headset;
- (e)] Anti-vibration wrap for tools;
- [(f)] **(e)** Special pen or pencil;
- [(g)] **(f)** Footrest;
- [(h)] **(g)** Wristrest; or
- [(i)] **(h)** Changing the height of a work surface.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Filed 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97

Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[ED. NOTE: The following rule has been amended and moved to *new* OAR 436-105.]

436-110-0510 Assistance Available from the Employer-at-Injury Program

[The Employer-at-Injury Program is an employer-option and employer-activated program. Its purpose is to encourage the early return to work of an injured worker before claim closure. The Employer-at-Injury Program may be used only once per worker per claim opening. The insurer at injury administers the program and requests reimbursement for program costs from the fund. Reimbursement is limited to:

(1) **Worksite Modification** which means altering a worksite by renting, purchasing, modifying or supplementing equipment, or changing the work process to enable a worker to work within the limitations imposed by the compensable injury which qualified the worker for the Employer-at-Injury Program. Maximum reimbursement is \$2,500.

(a) The form of modification shall be determined based solely on the obstacles to the worker performing the job due to the limitations caused by the compensable claim;

(b) Modifications must be provided for and used by the worker during the Employer-at-Injury Program, except when the employer can demonstrate that they were provided in good faith and the worker refused to return to work;

(c) A modification shall be provided only to allow the worker to perform the job within the limitations cited by the medical service provider;

(d) Worksite Modification items become the employer's property upon the end of the program, except for modifications unique to the worker, such as a custom-designed tool to adapt the worker's prosthesis to a job-related task, which become the worker's property.

(2) **Wage Subsidy** provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage Subsidy benefits are restricted to the following conditions:

(a) A Wage Subsidy is limited to a maximum duration of three consecutive months;

(b) A Wage Subsidy is limited to a monthly reimbursement rate of 50 percent; and,

(c) The wage subject to reimbursement shall be the wage, as defined in OAR 436-110-0005(10), paid in the early-return-to-work position for a wage subsidy started on or after September 12, 1997.

(3) **Employer-at-Injury Program Purchases** are limited to:

(a) Tuition, books and fees for classes or course of instruction to update existing skills or to meet the requirements of the job. Instruction must be provided by an entity accredited or licensed by an appropriate body. Maximum reimbursement is \$750.

(b) Tools and equipment required for the job limited to items mandatory for employment. Purchases do not include items the employer normally provides, items the worker possesses or duplicate worksite modification items. Maximum reimbursement is \$1,000.

(c) Clothing required for the job, except clothing the employer normally provides or the worker already possesses. Maximum reimbursement is \$400.

(d) Tools and equipment become the employer's property upon the end of the program. Clothing becomes the worker's property.]

Stat. Auth.: ORS 656.236, 656.289, 656.307, 656.622, 656.726(4)

Stats. Implemented: ORS 656.236(6), 656.289(5), 656.307(2), 656.622, 656.726(4)

Hist: Amended and renumbered from OAR 436-110-0200, 8/28/97 as Admin. Order 97-057, eff. 9/12/97

Amended and renumbered, 1st ¶ to OAR 436-105-0002, (1) to OAR 436-105-0520(2), (2) to OAR 436-105-0520(1), (3) to OAR 436-105-0520(3), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[ED. NOTE: The following rule has been amended and moved to *new* OAR 436-105]

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436-110-0520 Eligibility and End of Eligibility for the Employer-at-Injury Program

- [(1) The eligibility provisions for an employer are:
- (a) The employer has and maintains Oregon workers' compensation insurance coverage during and through the Employer-at-Injury Program period;
- (b) The employer complies with the Oregon Workers' Compensation Law;
- (c) The employer is the employer at injury;
- (d) The employer is reemploying an eligible worker as part of the employer's early- return-to-work program while the worker's claim is open; and,
- (e) The employer is not currently ineligible for Employer-at-Injury Program benefits under OAR 436-110-0900.
- (2) The eligibility provisions for a worker are:
- (a) The worker has an accepted Oregon compensable injury or occupational disease;
- (b) The worker has not returned to regular employment under the most recent claim opening except when there is a release for regular work which is subsequently rescinded; and,
- (c) The worker is released for work with restrictions which prevent the worker from performing full duty regular employment.
- (3) Reasons for ending Employer-at-Injury Program eligibility include but are not limited to the following:
- (a) Misrepresentation or omission of information by the worker or employer to obtain assistance;
- (b) Failure of the worker or employer to provide requested information or cooperate;
- (c) Conviction of fraud in obtaining workers' compensation benefits;
- (d) The worker releases all claim rights through a Disputed Claim Settlement in accordance with ORS 656.289;
- (e) The worker returns to regular employment;
- (f) The claim upon which eligibility was determined is subsequently denied in accordance with ORS 656.262;
- (g) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900;
- (h) The worker or employer fails to repair or replace a damaged or lost Worksite Modification item(s); or,
- (i) The employer does not maintain Oregon workers' compensation insurance coverage.]

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622(9), 656.726(4)

Hist: Amended and renumbered from OAR 436-110-0280, 5/15/97 as Admin. Order 97-057, eff. 9/12/97

Amended and renumbered to OAR 436-105-0510, 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

[**ED. NOTE:** The following rule has been amended and moved to *new* OAR 436-105]

436-110-0540 Procedure to Use the Employer-at-Injury Program

- [(1) The employer at injury or employer at aggravation shall directly contact the original insurer at the time of injury to request Employer-at-Injury Program assistance. The insurer shall respond to the request for assistance and administer the Employer-at-Injury Program according to these rules.
- (2) The insurer shall assist the employer to:
- (a) Identify an early-return-to-work position;
- (b) Obtain a temporary release for work from the worker's medical service provider; and,
- (c) Make Employer-at-Injury Program purchases as specified in OAR 436-110-0510.
- (3) The insurer shall maintain the following information at the authorized claims processing location(s):
- (a) Documentation from the worker's medical service provider that the worker is unable to perform full duty regular employment due to the injury and dated copies of the work release for modified work from the worker's medical service provider;
- (b) A copy of the worker's payroll records for the wage subsidy period. Payroll records shall state the dates (daily), hours, wage rate and the worker's gross wages for the wage subsidy period. Payroll records shall be a legible copy and compiled in accordance with generally accepted accounting procedures;
- (c) A legible copy of receipts for Employer-at-Injury Program purchases;
- (d) Justification for a Worksite Modification; and,
- (e) Documentation of the worker's early-return-to-work position. Documentation of the worker's early-return-to-work position shall include the reemployment start date, wage and hours and a description of the job duties.
- (4) For Worksite Modification, the insurer shall obtain a capacities and limitations statement from the worker's medical service provider and identify the injury-caused obstacles to employment. The insurer shall document the injury-caused obstacles to employment and how the modifications overcame those obstacles. If a chair costs over \$1,000, three competitive quotes shall be obtained. If three quotes are not available, documentation of efforts to obtain three quotes shall be provided. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to, past vendor performance, delivery time, and vendor availability to service or maintain the item.
- (5) Wages subject to reimbursement must have been paid the worker.
- (6) The insurer shall make duplicate Employer-at-Injury Program purchases only when the required items are currently in use by other workers in the Employer-at-Injury Program, the items are permanently assigned to the original injured worker, or when geographical location of the worksite makes transfer of the item(s) impractical.
- (7) The insurer may end the Employer-at-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-at-Injury Program when the worker's claim is closed, the worker is released for full-duty regular employment or the worker has returned to other work which is not part of the employer's Early-Return-to-Work Program, whichever occurs first.

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(8) The insurer must receive all insurer-required documentation for reimbursement from the employer within one year of the end of the Employer-at-Injury Program in order to qualify for reimbursement. The insurer shall date stamp each reimbursement request support document with the receipt date.

(9) The insurer shall mail, send by facsimile or hand-deliver the request for reimbursement to the division within one year and 30 days from the end of the Employer-at-Injury Program on an *Employer-at-Injury Program Reimbursement Request* form. Reimbursement requests must be in the manner and format the director prescribes by bulletin. Reimbursements may include Wage Subsidy, Employer-at-Injury Program Purchases, and Worksite Modification. Reimbursements may include Employer-at-Injury Program costs for a nondisabling claim for a program begun on or after January 1, 1996. For an Employer-at-Injury Program begun on or after January 1, 1996, administrative costs will be reimbursed. The administrative cost factor to be applied to each reimbursement request shall be computed by the division and published by bulletin.

(10) Amended reimbursement requests must be in the manner and format the director prescribes by bulletin. Amendments are limited to payroll miscalculations, mathematical errors, and Worksite Modification and Employer-at-Injury purchase omissions. Employer-at-Injury Program and Wage Subsidy start and end dates may be amended only due to typographical errors, if satisfactory evidence of the error is provided.

(11) The department may deny reimbursement for Worksite Modification and Employer-at-Injury Program Purchases if it determines they are not reasonable, practical or feasible for the job.

(12) The insurer shall not use Employer-at-Injury Program costs subject to reimbursement for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that Employer-at-Injury Program costs do not affect the employer's rates or dividend.

(13) If a Preferred Worker employed by an eligible employer with active Premium Exemption incurs a new injury, the claim is subject to Claim Cost Reimbursement. If the worker subsequently enters an Employer-at-Injury Program, program costs are to be separated from claim costs and will not be reimbursed as claim costs. These program costs are to be billed on an *Employer-at-Injury Program Reimbursement Request* form, not on a *Quarterly Claim Cost Reimbursement Request* form.]

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622, 656.726(4)

Hist: Amended and renumbered from OAR 436-110-0360, 8/28/97 as Admin. Order 97-057, eff. 9/12/97

Amended and renumbered, section (2) to OAR 436-105-0500(4)-(5), (3) to OAR 436-105-0500(6), (7) to OAR 436-105-0500(7), (8) to OAR 436-105-0540(1), (9) to OAR 436-105-0540(2), (10) to OAR 436-105-0540(5)-(6), (11) to OAR 436-110-0007(1), (12) to OAR 436-105-0540(8), (13) to OAR 436-105-0540(9), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0850 Audits

(1) Insurers and employers are subject to periodic program and fiscal audits by the division. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements may be recovered by the division directly or from future reimbursements by way of offset. If the division finds upon audit that procedures which led to disallowed reimbursements are still being used, the division may withhold further reimbursements until corrections satisfactory to the division are made.

(2) [The] **An insurer or employer** shall maintain [case files] **claim records**, notices, worker payroll records, reports, receipts, and documentation of payment supporting reemployment assistance costs for which reimbursement has been requested [by the insurer] **or expenditure by Authorization for Payment has been made**. These records shall be maintained [in accordance with OAR 436-050 or] for a period of three years after the last reimbursement request **or expenditure by Authorization for Payment**.

(3) The division reserves the right to visit the worksite to determine compliance with the agreement under which reemployment assistance has been provided.

Stat. Auth.: ORS 656.455, 656.622, 656.726(4), 731.475

Stats. Implemented: ORS 656.455, 656.622, 731.475

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/1/87

Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88

Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

Renumbered from OAR 436-110-100, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93

Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96

Renumbered from OAR 436-110-0450, 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97

Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

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436-110-0900 Sanctions

[(1) If the director finds an individual certified under OAR 436-120, a vocational assistance provider authorized under OAR 436-120, an agency of the State of Oregon, or an insurer misrepresented information in order to obtain reemployment assistance, made a serious error or omission which resulted in the division approving a Reemployment Assistance Program agreement, issuing a Preferred Worker card, or reimbursing claim costs in error, or failed to comply with any condition of these rules, the director may do any, or all, of the following:

(a) Order the vocational assistance provider, state agency, or the insurer to assume all or part of the financial obligation for the agreement;

(b) Prohibit an individual certified under OAR 436-120, a vocational assistance provider authorized under OAR 436-120, a state agency or an insurer from negotiating or arranging reemployment assistance for such period as the director deems appropriate;

(c) Decertify an individual or vocational assistance provider under the authority of OAR 436-120.

(2) If the director finds an employer falsely obtained reemployment assistance, failed to maintain Oregon workers' compensation insurance, failed to abide by the terms and conditions of a Reemployment Assistance Program agreement or these rules, failed to return required receipts or invoices, submitted false reimbursement requests or job analyses, altered an Authorization for Payment form or purchased unauthorized items, inappropriately disposed of or reassigned Worksite Modification property, or unreasonably terminated a worker employed under a Reemployment Assistance Program agreement, the director may do any, or all, of the following:

(a) Order the employer ineligible for reemployment assistance for a specific period of time;

(b) Order the employer to repay the department for reemployment assistance costs incurred, including the department's legal costs;

(c) Pursue civil or criminal action against the employer.

(3) If the director finds a worker falsely obtained reemployment assistance, failed to abide by the terms and conditions of a Reemployment Assistance Program agreement or these rules, failed to return a Preferred Worker card or required receipts or invoices, altered an Authorization for Payment form or purchased unauthorized items, inappropriately disposed of Worksite Modification property, or submitted false reimbursement requests or job analyses, the director may do any, or all, of the following:

(a) Order the worker ineligible for reemployment assistance for a specific period of time;

(b) Order the worker to repay the department for reemployment assistance costs incurred, including the department's legal costs;

(c) Pursue civil or criminal action against the worker.]

(1) Any person who knowingly makes any false statement or representation to the director or an employee of the director for the purpose of obtaining any benefit or payment from the Preferred Worker Program or who knowingly misrepresents the amount of a payroll, or knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an individual certified under OAR 436-120, a vocational assistance provider authorized under OAR 436-120, an agency of the State of Oregon, an insurer, an employer, or a Preferred Worker include, but are not limited to, the following:

(a) Misrepresenting information in order to obtain reemployment assistance. Two examples of misrepresentation are:

(A) Changing a job description or job title where there are not corresponding job duty changes in order to obtain benefits; and

(B) Obtaining a worker's signature on an incomplete, incorrect, or blank agreements or reimbursement requests;

(b) Making a serious error or omission which resulted in the division approving a Preferred Worker Program agreement, issuing a Preferred Worker card, or reimbursing claim costs in error;

(c) Failing to abide by the terms and conditions of a Preferred Worker Program agreement;

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(d) Failing to abide by the provisions of these rules or ORS 656.990;

(e) Failing to return required receipts or invoices;

(f) Submitting false reimbursement requests or job analyses;

(g) Altering an *Authorization for Payment* form or purchasing unauthorized items;

or

(h) Failing to return a Preferred Worker card if requested by the division.

(3) Sanctions by the director may include one or more of the following:

(a) Ordering the person being sanctioned to repay the department for reemployment assistance costs incurred, including the department's legal costs;

(b) Prohibiting the person being sanctioned from negotiating or arranging reemployment assistance for such period of time as the director deems appropriate;

(c) Decertifying an individual or vocational assistance provider under the authority of OAR 436-120;

(d) Ordering an employer and/or worker ineligible for reemployment assistance for a specific period of time; and

(e) Pursuing civil or criminal action against the party.

Stat. Auth.: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622, 656.990

Hist: Filed 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
Renumbered from OAR 436-110-110, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93
Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96
Amended and renumbered from OAR 436-110-0500, 8/28/97 as WCD Admin. Order 97-057, eff. 9/12/97
Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01