

**DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
ASSISTANCE FROM THE WORKERS' REEMPLOYMENT RESERVE**

**EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110**

EFFECTIVE JANUARY 1, 1988

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436-110-001 Authority for Rules

(1) The Director has adopted OAR 436-110 by the Director's authority under ORS 656.622 and ORS 656.726(3).

(2) An order of a division or section, issued under the Director's authority to administer ORS chapter 656 and rules adopted under that chapter, shall be considered an order of the Director.

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Amended 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88

436-110-002 Purpose of Rules

The purpose of these rules is:

(1) To prescribe the terms of eligibility for reemployment assistance to workers and Oregon employers who reemploy or hire workers with disabling compensable injuries or diseases, and the nature and extent of the assistance, pursuant to ORS 656.622; and,

(2) To establish criteria for payment and reimbursement to insurers and employers from the reserve created in ORS 656.622.

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436-110-003 Applicability of Rules

(1) These rules govern all requests for assistance from the Workers' Reemployment Reserve filed with the Director on and after January 1, 1988, except for assistance to sheltered workshops as provided in ORS 656.530.

(2) Requests for second injury relief filed in accordance with rules adopted under WCB Administrative Order 3-1973, on which the Board or Director issued a determination of eligibility prior to October 4, 1977, shall be processed and paid as provided for in that Administrative Order.

(3) Requests for second injury relief filed in accordance with rules adopted under WCD Administrative Order 2-1978, on which the Department issued a Wage Subsidy, Worksite Modification or Increased Cost Protection contract prior to January 1, 1982, shall be paid as provided in that Administrative Order.

(4) Employers with increased Cost Protection contracts may also apply for relief in accordance with the provisions of the Handicapped Workers Reserve, OAR 436-40. If it appears that the total costs of the second injury will exceed the contractual limits of the Increased Cost Protection contract, the employer may seek Handicapped Workers Reserve benefits in order to reduce those costs to the \$20,000 limit payable in accordance with the contract.

(5) Workers' Reemployment Reserve contracts approved by the Department prior to March 16, 1987, in accordance with rules adopted under WCD Administrative Order 7-1981, shall be paid as provided in that Administrative Order.

(6) Workers' Reemployment Reserve agreements approved by the Department prior to January 1, 1988, in accordance with rules adopted under WCD Administrative Order 1-1987, shall be paid as provided in that Administrative Order.

(7) The Director may waive provisions of these rules if the Director finds it necessary to carry out the provisions of ORS 656.622.

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436-110-005 Definitions

As used in these rules:

(1) "Administrative approval" means an approval or finding in a particular matter by the administrator of the Workers' Compensation Division, or the administrator's delegate for the matter. "Prior administrative approval" means that such approval, or a waiver under OAR 436-110-003(7), has been secured before any commitment is made to provide assistance governed by these rules.

(2) "Department" means the Department of Insurance and Finance.

(3) "Director" means the Director of the Department of Insurance and Finance.

(4) "Division" means the Workers' Compensation Division of the Department of Insurance and Finance.

(5) "Employer" means a subject employer within the meaning of the Workers' Compensation Law who meets the requirements of all other applicable state and federal regulations. "Employer-at-injury" means the person in whose employ the worker sustained the injury or made the claim for aggravation which gave rise to the need for reemployment assistance.

(6) "Employment" used with certain modifiers has the following meanings:

(a) "Suitable employment" means permanent employment of the kind for which the worker has the necessary physical capacities, knowledge, skills or abilities, and providing a wage as close as possible to the wage currently being paid for employment which is the regular employment for the worker. For the purposes of this subsection:

(A) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(B) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(C) "Abilities" means the mental and physical capability to apply the worker's knowledge and skills.

(b) "Permanent employment" means employment normally expected to last indefinitely subject to the employer's business practices and policies, collective bargaining agreement(s), applicable statutes and economic conditions.

(7) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer.

(8) "Preferred worker" means a worker who, because of a compensable injury, is unable to return to regular employment without substantial work or worksite modification and is eligible for assistance under these rules.

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(9) "Reemployment assistance" means any of the goods and services under these rules for assisting employers in the reemployment or hiring of injured workers.

(10) "Section" means the Rehabilitation Review Section of the Workers' Compensation Division of the Department of Insurance and Finance.

(11) "Standard premium" means the results of a calculation which takes payroll multiplied by the applicable rates of the employer's individual insurer multiplied by the employer's experience rating modification.

(12) "Substantial obstacle" means a permanent physical or mental impairment resulting from a disabling, compensable injury, which limits or prevents a worker from engaging in suitable permanent employment.

(13) "Wages" mean the money rate at which the service rendered is recompensed under the contract of hiring, not including commission, tips, overtime, paid vacation, paid sick leave, other paid leave, board, housing, rent or other remuneration.

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436-110-006 Rehabilitation Review Section

The Rehabilitation Review Section is charged with assuring that injured workers and employers receive reemployment assistance pursuant to ORS 656.622 and these rules; and, maintaining the integrity of the Department's reimbursement of reemployment assistance costs.

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436-110-010 Policy Governing Assistance from the Workers' Reemployment Reserve

(1) Assistance to employers from the Workers' Reemployment Reserve shall be provided in order to encourage employers to reemploy or hire workers who have a substantial obstacle to suitable employment.

(2) All employment for which reemployment assistance is granted shall be suitable employment.

(3) All reemployment assistance is subject to the conditions set forth in these rules.

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436-110-020 Criteria for Granting Assistance from the Workers' Reemployment Reserve; Eligibility and Ineligibility of Workers and Employers

An employer and worker are eligible for assistance from the Workers' Reemployment Reserve when the employer agrees to reemploy or hire the worker, the worker and employer are in compliance with all applicable state and federal statutes regarding employment, and:

(1) As a result of the injury the worker has not successfully returned to suitable employment and will not be able to return to the employment the worker held at the time of injury or the claim for aggravation, or the worker's customary employment.

(2) The worker has a substantial obstacle to employment resulting from the injury, and there is:

(a) A preponderance of medical evidence which indicates the disability would appear to be permanent; or

(b) The worker has a Determination Order, Order of a Referee, Order on Review by the Board, decision of the Court of Appeals or an approved stipulation which grants permanent disability.

(3) A worker is not eligible for reemployment assistance if the worker has intentionally misrepresented a matter material to the provision of reemployment assistance.

(4) An employer is not eligible for reemployment assistance if:

(a) The employer intentionally misrepresents a claim for reimbursement wages or submits reimbursement claims prior to paying the costs.

(b) The employer fails to provide or maintain Oregon workers' compensation insurance.

(c) The employer has established a pattern of terminating workers within 60 days after completion of the agreement.

(d) The employer fails to abide by any other provision of a reemployment assistance agreement, or these rules.

(5) An employer hiring a relative, patient, client, corporate officer or their relative, shareholder or other person with whom they have a relationship other than a usual employer-employee relationship, are not eligible for reemployment assistance without prior administrative approval.

(6) An employer failing to comply with these rules may be barred from receiving reemployment assistance for a period prescribed by the Director.

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436-110-035 Kinds and Conditions of Reemployment Assistance

The following kinds of reemployment assistance are available under the conditions set

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forth in this rule:

(1) Wage subsidy. A wage subsidy reimburses an employer for a portion of a preferred worker's wages for a specified period. A wage subsidy shall be limited in duration to six months, and shall not exceed a monthly rate of 50 percent reimbursement of wages paid by the employer, other than for a worker with an exceptional disability. "Exceptional disability" means a disability equivalent to the complete loss, or loss of use, of two or more limbs. The determination of whether a disability is exceptional requires administrative approval. In no case shall reimbursement exceed 75 percent of the wages paid in any one month.

(2) Worksite modification. A worksite modification alters the configuration of a worksite, or involves purchasing, modifying or supplementing equipment to enable a preferred worker to work within the limitations imposed by an injury. A worksite modification in excess of \$1,000 requires prior administrative approval. A worksite modification shall be limited in any one case to \$15,000, other than for a worker with an exceptional disability. Other conditions under OAR 436-110-090(5)(g) and (6) also apply. A worksite modification may include one or more of the following elements:

(A) Provision of tools, equipment, fixtures or furnishings; installation of equipment or machinery; or alteration of permanent structures, beyond that which would customarily be provided by an employer to all employees and which would normally be a component of the worksite.

(B) Engineering, architectural, ergonomic and other professional consultive services to determine the feasibility of, or design, worksite modifications.

(3) Premium relief. Premium relief provides the following assistance to the employer:

(a) The employer who hires a preferred worker will receive reimbursement of the premium for that worker for the first two years from the date of hire; and

(b) The employer shall not incur any increase in premium, or decrease in dividend otherwise due, as a result of an injury sustained by a preferred worker within two years after the date of hire.

(4) Obtained employment purchases. Obtained employment purchases are limited to those services and items an employer requires of a preferred worker as a condition of employment, or required for the worker to be able to accept the employment. This assistance is restricted to workers who are not eligible for vocational assistance under OAR 436-120, and are not receiving temporary total disability compensation. Obtained employment purchases are limited to the following:

(a) Tuition, books and fees for a class or course of instruction may be provided to meet the requirements of an obtained job. Payment is limited to \$500 for this category.

(b) Tools and equipment required for obtained employment shall be limited to those items mandatory for initial employment, such as starter sets. Purchases shall not include what the employer would normally provide, what the worker possess; or, if provided in conjunction with worksite modification, duplicate items provided as part of such modification. Payment is limited to \$1500 for this category.

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(c) Clothing required as a condition of obtained employment. Purchases shall not include what the employer would provide. Payment is limited to \$300 for this category.

(d) Moving expenses. Payment requires that the worker have obtained employment outside commuting distance. Payment shall be limited to covering the cost of household goods weighing not more than 10,000 pounds and, if necessary, paying reasonable costs of meals and lodging for the worker's family. Payment for moving expenses, and mileage for one vehicle at \$.21 per mile, is limited to a single one-way trip. In determining the necessity of paying moving expenses the department shall consider the possible availability of employment which does not require moving, or which requires less than the proposed moving distance.

(e) Rental allowance for primary residence. This allowance shall be limited to first and last month's rent, and requires the worker to have been required to move outside normal commuting distance to accept employment.

(f) Dues and fees of a labor union. Payment shall be limited to initiation fees, or back dues and one month's current dues, of a labor union which is the bargaining agent for the employment obtained by the worker.

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436-110-060 End of Agreement Other Than by Completion

(1) If a reemployment assistance agreement is prematurely ended by the employer for reasons beyond the worker's control, the worker may be eligible for further assistance from the Workers' Reemployment Reserve with prior administrative approval.

(2) If a wage subsidy is interrupted for reasonable cause, it may be extended for a period equal to the length of interruption.

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436-110-080 Resolving Reemployment Assistance Disputes; Appeal to the Director

(1) If an employer, worker or insurer is aggrieved by a decision of the Section, the aggrieved party may request a review by the Director.

(2) Pursuant to ORS 656.622(2), the Director's decision shall be final and not subject to review by any court or other administrative body.

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436-110-090 Filing of Agreements; Reimbursement of Reemployment Assistance Costs

(1) Reemployment assistance requests, agreements and supporting information shall be in the format prescribed by the Director.

(2) A Workers' Reemployment Reserve agreement shall be filed with the Department

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within ten days after obtaining the signatures of the parties, accompanied by the supporting information.

(3) The employer shall notify the department in writing when any agreement has been terminated by the employer prior to its originally scheduled completion date. Such notice shall be accompanied by the final reimbursement request.

(4) In the absence of the employer's or insurer's ability to pay, nothing in these rules precludes the department from advancing funds to enable the employer to perform a worksite modification or make an obtained employment purchase. In no case shall the department directly purchase or otherwise assume responsibility for worksite modifications or obtained employment purchases. Prior administrative approval is required in all such instances.

(5) The following procedures and conditions apply to reimbursing or advancing funds for costs of reemployment assistance:

(a) Reimbursement or advancement of funds shall be made only for reemployment assistance provided in accordance with these rules. Reimbursement under these rules shall not be made for vocational assistance under OAR 436-120.

(b) Reimbursement or advancement of funds will be made only after the agreement has been filed and approved. Requests for reimbursement or the advancement of funds shall be made in the manner prescribed by the Director.

(c) The Department will reimburse or advance funds for costs of reemployment assistance, subject to the availability of funds.

(d) Reemployment assistance costs must be paid before reimbursement is requested.

(e) 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 change the costs of the reemployment assistance to the insured employer, worker or the new employer.

(f) Reimbursement requested before the employer has paid the costs is subject to denial or recovery by the Department. Insurers requesting reimbursement prior to paying the costs are subject to denial or recovery, in addition to any penalties under ORS chapter 656.

(g) Further procedures and conditions relating to reimbursement for worksite modification costs and obtained employment purchases are as follows:

(A) If the cost for a single item is over \$1,000, three competitive quotes shall be obtained. If three quotes are not available, documentation of efforts to obtain three quotes shall be made (i.e., sole source). The lowest quote shall normally be selected.

(B) Multiple orders to circumvent the requirements of this section shall not be issued.

(h) Further procedures and conditions relating to premium relief are as follows:

(A) Employers shall submit quarterly requests for relief to the Compliance Section, Workers' Compensation Division, Department of Insurance and Finance in the form and format prescribed by the Director.

(B) Compliance Section will review the data submitted for accuracy and authorize

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reimbursement, subject to future audits.

(C) Reimbursement will be made equal to the standard premium of the employer based only on the payroll of their preferred workers.

(h) For wage subsidy and premium relief, employers and workers are required to certify payroll reimbursement and wages actually paid and received, as prescribed by the Director.

(6) If prior to the termination of a worksite modification agreement, the employer fails to meet any conditions prescribed for the care and protection of property in the employer's custody, and the property suffers damage or loss, the employer shall not be compensated for repair or replacement of the property.

(7) If prior to the termination of an agreement under these rules, the worker fails to adequately care for and protect property provided under OAR 436-110-035(4), and the property suffers damage or loss, the worker shall not be compensated for repair or replacement of the property.

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436-110-095 Requirements of insurers, Employers and Ratemaking Organizations Under Premium Relief

The following provisions apply to employers, the Department, insurers and ratemaking organizations licensed pursuant to ORS chapter 737, to provide premium relief under OAR 436-110-035(3):

(1) Total claims costs incurred as a result of any injury sustained by a preferred worker within two years after that worker is hired shall not be included in any process, calculation or report that could increase the employer's premium or premium rate, or decrease any dividend otherwise due the employer.

(2) Employers are responsible for notifying their insurers of the employment of each preferred worker for which they are receiving premium relief, and the duration of the preferred worker's status, by submitting a copy of the preferred worker agreement to the insurer. Notification shall be made at the time the employer applies for workers' compensation insurance or within 10 days of hiring a preferred worker where insurance is in effect at the time of hiring.

(2) In determining premium costs for a self-insured employer or employer on a retrospective rating plan, the Department shall simulate a premium for the preferred worker by using the published rates for self-insured employers and by using a standard insurance plan.

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436-110-100 Audits

(1) Insurers and employers are subject to periodic program and fiscal audits by the Department. 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 Department directly or from future reimbursements by way of offset. If the Department finds upon audit that procedures which led to disallowed reimbursements are still being used, the Department may withhold further reimbursements until corrections satisfactory to the

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Department are made.

(2) The insurer shall maintain case files, records, reports, receipts and canceled checks documenting reemployment assistance costs for which reimbursement has been requested by the insurer. These records shall be maintained in accordance with OAR 436-50 or for a period of three years after the last reimbursement request.

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

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436-110-110 Sanctions

If the Director finds that a vocational assistance provider authorized pursuant to OAR 436-120 or an insurer misrepresented information in order to obtain reemployment assistance, or made a serious error or omission which results in Rehabilitation Review Section approving a Workers' Reemployment Reserve agreement, the Director may do one or both of the following:

(1) Order the insurer or vocational assistance provider to assume all or part of the financial obligation for the agreement;

(2) Prohibit an individual certified under OAR 436-120, a vocational assistance provider or an insurer from negotiating or arranging Workers' Reemployment Reserve agreements for such period the Director deems appropriate.

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