

**ADMINISTRATIVE ORDER NO. 93-050
EFFECTIVE MARCH 1, 1993**

**OREGON DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110**

REEMPLOYMENT ASSISTANCE RESERVE

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

436-110-001 Authority for Rules

The Director has adopted OAR 436-110 under authority of ORS 656.530, ORS 656.622(7) and ORS 656.726(3).

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
Amended 9/29/77 as WCD Admin. Order 2-1977 (temp), eff. 10/4/77
Amended 2/1/78 as WCD Admin. Order 2-1978, eff. 2/1/78
Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82
Renumbered from OAR 436-63-001, 5/1/85
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
Amended 6/21/90 as WCD Admin. Order 13-1990 (temp), eff. 7/1/90
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

436-110-002 Purpose of Rules

These rules explain what assistance and reimbursements are available from the Reemployment Assistance Reserve, who is qualified and how to receive assistance and reimbursements.

Hist: Filed 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
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

436-110-003 Applicability of Rules

These rules apply to all requests for reemployment assistance received by the Division on or after the effective date of these rules. Reemployment 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.

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 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
Amended 1/21/93 as WCD Admin. Order 93-050, eff. 3/1/93

436-110-005 Definitions

(1) "Administrator" means the Administrator of the Workers' Compensation Division, Department of Insurance and Finance or the Administrator's delegate.

(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,

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as well as attorney fees awarded to the worker or the worker's beneficiaries.

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

(4) "Director" means the Director of the Department of Insurance and Finance or the Director's delegate.

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

(6) "Employer" means a subject Oregon employer within the meaning of the Workers' Compensation Law.

(7) "Employer-at-injury" means the organization in whose employ the worker sustained the injury or occupational disease, or made the claim for aggravation.

(9) "Preferred worker" means a subject Oregon worker as described in ORS 656.005(26) and ORS 656.027 who, because of permanent disability resulting from a compensable injury or occupational disease is unable to return to regular employment, and meets the Preferred Worker Program eligibility criteria for assistance under these rules.

(10) "Regular employment" means the job the worker held at the time of 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.

(11) "Reserve" means the Reemployment Assistance Reserve.

(12) "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.

Hist: Filed 1/2/73 as WCB Admin. Order 1-1973, eff. 1/15/73
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Amended 2/1/78 as WCD Admin. Order 2-1978, eff. 2/1/78
Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82
Renumbered from OAR 438-63-010, 5/1/85
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
Amended 6/21/90 as WCD Admin. Order 13-1990 (temp), eff. 7/1/90
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

436-110-006 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 Division maintains the financial integrity of the Reserve 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 funds from the Reserve for educational 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. Educational activities include, but are not limited to:

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

(b) Public reemployment assistance program conferences and workshops; and,

(c) Cooperative agreements with State of Oregon agencies and community colleges to defray costs for assisting the Preferred Worker Program in providing assistance to preferred workers and employers of preferred workers.

Hist: Filed 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
Amended 6/21/90 as WCD Admin. Order 13-1990 (temp), eff. 7/1/90
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

436-110-007 Administrative Review/Appeal to the Director

An injured worker, the employer-at-injury, the employer's insurer, the potential employer or employer of an eligible worker, the potential or actual employer's insurer who disagrees with a reemployment assistance decision of the Division may request a review by filing a written request for review with the administrator of the Workers' Compensation Division no later than 60 days after the date the decision is issued.

(1) The request for review shall specify the reasons why the decision is appealed. No review shall be granted unless the request meets the requirements of this subsection;

(2) Review of the decision by the Division will occur prior to a Director's review. All affected parties will be notified by the Division if the initial decision is reversed. If the decision is upheld, a Director's review shall begin;

(3) The Director may require any party described in section (1) of this rule to provide information or to participate in the Director's review. If the party requesting the Director's review does not participate as requested, without reasonable cause as determined by the Director, the Director's review will be dismissed. The Director's review decision will be issued in writing. The Director's review decision is final and not subject to further review by the Department or any court or other administrative body.

Hist: Filed 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
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436-110-008 Administrative Review

Hist: Repealed by WCD 1-1987 (Admin), f. 2-20-87, eff. 3-16-87

436-110-009 Kinds of Reemployment Assistance

Hist: Repealed by WCD 12-1987 (Admin), f. 12-17-87, eff. 1-1-88

[ED. NOTE: Former OAR 436-110-010 through 110 has been renumbered and changed in its entirety.]

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436-110-010 [Renumbered to 436-110-200]

436-110-015 [Renumbered to 436-110-006]

436-110-017 [Renumbered to 436-110-240]

436-110-020 [Renumbered to 436-110-200 and 280]

436-110-022 [Renumbered to 436-110-320]

436-110-025 [Renumbered to 436-110-200 and 400]

436-110-030 **Substantial Obstacles to Employment**

Hist: Repealed by WCD 1-1987 (Admin), f. 2-20-87, eff. 3-16-87

436-110-031 [Renumbered to 436-110-400]

436-110-032 [Renumbered to 436-110-400]

436-110-035 [Renumbered to 436-110-400]

436-110-037 [Renumbered to 436-110-400]

436-110-040 **Securing Assistance or Relief**

Hist: Repealed by WCD 1-1987 (Admin), f. 2-20-87, eff. 3-16-87

436-110-041 [Renumbered to 436-110-200 and 400]

436-110-042 [Renumbered to 436-110-200]

436-110-045 [Renumbered to 436-110-200 and 400]

436-110-047 [Renumbered to 436-110-400]

436-110-050 **Kinds of Assistance or Relief**

Hist: Repealed by WCD 1-1987 (Admin), f. 2-20-87, eff. 3-16-87

436-110-051 [Renumbered to 436-110-400]

436-110-052 [Renumbered to 436-110-400]

436-110-060 [Renumbered to 436-110-400]

436-110-070 **Effect of Substantial Obstacle to Employment Arising From a Condition**

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Not Related to the Occupational Injury

Hist: Repealed by WCD 1-1987 (Admin), f. 2-20-87, eff. 3-16-87

436-110-080 [Renumbered to 436-110-007]**436-110-090 [Renumbered to 436-110-360]****436-110-095 Early Return-to-Work Pilot Programs**

Hist: Filed 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
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Repealed 1/21/93 by WCD Admin. Order 93-050, eff. 3/1/93

436-110-100 [Renumbered to 436-110-450]**436-110-110 [Renumbered to 436-110-500]****436-110-200 Assistance Available from the Reemployment Assistance Reserve**

(1) Assistance available from the Reserve includes the Employer-at-Injury Program and the Preferred Worker Program.

(2) 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 Reserve. Features of the program include allowing purchases limited to:

(a) Worksite modification as defined in section (8) of this rule. Maximum reimbursement is \$2,500;

(b) Wage subsidy as defined in section (6) of this rule, except wage subsidy benefits are restricted to the following conditions:

(A) A wage subsidy is limited to a maximum duration of three months and may not be interrupted or extended;

(B) A wage subsidy is limited to a monthly reimbursement rate of 50 percent; and,

(C) The wage must be either the wage at injury or the wage paid in the early return-to-work position, whichever is lower.

(c) Tuition, books and fees for a class or course of instruction to update existing skills or to meet the requirements of the job. Maximum reimbursement is \$750;

(d) Tools and equipment required for the job limited to items mandatory for employment, such as starter sets. Purchases do not include items the employer normally provides, items the worker possesses or duplicate worksite modification items. Maximum reimbursement is 1,000;

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

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(f) All Employer-at-Injury Program purchases, except clothing and worksite modifications unique to the worker as specified in subsection (8)(k)(A), become the employer's property upon the end of the program.

(3) The Preferred Worker Program is a worker-option and worker-activated program. Its purpose is to encourage the employment of the worker. The program consists of premium exemption, claim cost reimbursement, wage subsidy, obtained employment purchases and worksite modification. The worker may offer reemployment assistance to the employer. The employer receives the benefit of the reemployment assistance the worker and employer agree to use. Premium exemption and claim cost reimbursement may be used multiple times within the three-year period of eligibility. A preferred worker may use wage subsidy and obtained employment purchase assistance twice, except as otherwise provided in these rules, once with the initial employer and once with a subsequent employer. Worksite modification assistance may be used twice. If a preferred worker has a new injury or an aggravation and meets the Preferred Worker Program eligibility criteria, a new Preferred Worker Identification Card will be issued as specified in OAR 436-110-320.

(4) "Premium exemption" releases the employer from paying workers' compensation insurance premiums or premium assessments for three years from the date of first use by the worker. If the worker has a new compensable injury, the employer does not have the claim costs charged to its experience rating. 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 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.

(5) "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. Specific limitations of requesting claim cost reimbursement include the following:

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

(b) Reimbursements include disability benefits, medical benefits, vocational costs (except self-employment), claim disposition agreements in accordance with ORS 656.236, disputed claim settlements in accordance with ORS 656.289, 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 developed in the manner specified in OAR 436-50-180; and,

(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 premium or premium assessment with the present or a future insurer. The insurer must be able to document that claim

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data will not affect the employer's rates or dividend.

(6) "Wage Subsidy" provides an employer with partial reimbursement of a worker's gross wages for a specified period. "Wages" means the money rate paid a worker for services performed including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging and similar advantage received from the employer, as determined by the division in accordance with OAR 436-60. "Wages" do not include tips, bonuses, employee insurance or benefits programs, employee discounts or other forms of remuneration. Wage subsidy benefits are restricted by 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. For a worker with an exceptional disability, the wage subsidy duration is limited to one year and a monthly reimbursement rate of 75 percent. For the purposes of these rules, "exceptional disability" means a disability equivalent to the complete loss, or loss of use, of two or more limbs including, but not limited to, a serious head injury resulting in a significant loss of memory, cognitive ability or motor function or massive injuries where the loss of limbs has not occurred. 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 awarding permanent disability;

(b) A wage subsidy may be interrupted for reasonable cause and extended to complete the wage subsidy on a whole workday basis. Examples of reasonable cause include, but are not limited to, personal or family illness, death in the family or pregnancy of the worker; and,

(c) Wages subject to reimbursement must be within the prevailing wage range for that occupation and unsubsidized by any other source. The prevailing wage range is determined by first examining the wages paid by the employer for other workers doing the same job. If no other workers are doing the same job, a labor market survey of the local labor market may be conducted. If the labor market survey does not support the wage rate requested, the Occupational Program Planning System for the specific region of Oregon will be used. The Occupational Program Planning System is a document published annually by the State of Oregon, Department of Human Resources, which lists wage ranges for common occupations in Oregon. If neither the labor market survey nor Occupational Program Planning System support the wage rate requested, the Division will determine the wage subject to reimbursement.

(7) "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 outside the state of Oregon. All purchases become the worker's property upon employment in the job for which they are required. Obtained employment purchases are limited to:

(a) Tuition, books and fees for a class or course of instruction to update existing skills or to meet the requirements of an obtained job. Maximum reimbursement is \$750;

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

(c) Clothing required for the job, not including clothing the employer normally provides

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and/or the worker already possesses. Maximum reimbursement is \$400;

(d) Moving expenses for a job more than 50 miles from the worker's primary residence. 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, when the worker's permanent disability from the injury precludes the worker from commuting the required distance. A signed statement from the worker's medical service provider, as defined in OAR 436-10, shall be submitted to the Division as evidence of the worker's inability to commute the required distance. Reimbursement is limited to 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. Reimbursement of moving expenses and mileage for one vehicle is limited to a single one-way trip;

(e) Rental allowance for the worker's primary residence limited to first and last month's rent and non-refundable security and utility fees, when the worker is required to move outside commuting distance to accept a job as specified in subsection (d) of this rule;

(f) Temporary lodging, meals and mileage to attend a class or course of 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, Department of Insurance and Finance, classified employees covered under the collective bargaining agreement. These rates may be exceeded with prior Division approval where special transportation or lodging is needed. Lodging, meals and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$2,500;

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

(h) Medical service provider review of a job analysis required to support a Worksite Modification Agreement. This category may be used more than twice with prior Division approval. Maximum reimbursement is \$150 for each job analysis review;

(i) Occupational certification, license and related testing costs, or membership fees required for the job. Maximum reimbursement is \$500; and,

(j) A physical capacities evaluation by the worker's medical service provider, when requested by the Division.

(8) "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. "Worksite" means an employer's or worker's premises, property and equipment used to conduct business under the employer's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. Requirements for the use of worksite modification assistance are as follows:

(a) The form of modification will be determined based on the worker's disabilities from Oregon compensable injuries. The Division shall make the final determination of what is needed to modify the job. The Division must approve a completed and signed Worksite Modification Agreement, filed by the worker and employer as specified in OAR 436-110-400(6)(f), prior to any reimbursement or-authorization for expenditure;

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- (b) Modifications may be provided up to three years from the date the worker returns to work;
- (c) Modifications will only be provided to allow the worker to perform the job duties within the worker's mental and physical capabilities;
- (d) Modifications may be provided to allow a worker to return to regular work;
- (e) Modifications after June 30, 1990, are limited to a maximum of \$25,000 in 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 (6)(a);
- (f) Modifications over \$2,500 require prior Division approval;
- (g) Modifications limited to a maximum of \$2,500 may be provided for on-the-job training under OAR 436-120, 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) Modifications must be practical and feasible as determined by the Division;
- (i) 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, with prior 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;
- (j) A modification may include tools, equipment, fixtures or furnishings not customarily provided by an employer. It may include installation of equipment or machinery, or alteration of permanent structures, and engineering, architectural, ergonomic and similar consultative services to determine the feasibility of or to design worksite modifications. Consultative services require prior Division approval and are limited to a cost of up to \$3,500. The cost for consultative services applies toward the total cost of a worksite modification.
- (k) Modification equipment shall become the employer's property upon successful completion of a Worksite Modification Agreement and employment of the worker, except when specified by the Division. Determination of equipment ownership shall be made prior to beginning an agreement. Exceptions to the modification becoming the employers 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 the worker's personal property or premises.
- (l) If, prior to the end of a Worksite Modification Agreement, the modification is damaged, in need of repair or lost, the employer or worker must repair or replace the modification without repayment from the Division. The employer or worker shall not dispose of the modification while the worker is employed or prior to the end of the agreement without

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Division approval. Failure to repair or replace the modification, or early disposal of the modification may result in the end of eligibility for reemployment assistance.

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 Renumbered from OAR 496-110-010, 020, 025, 041, 042, and 045, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93

436-110-240 Insurer Participation in Reemployment Assistance

(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 Reserve, administering the Employer-at-Injury Program as specified in OAR 436-110-200(2) and 360, and providing return-to-work information and support information for the Preferred Worker Program as specified in OAR 436-110-200(3) through (8), and 400.

(2) The insurer shall notify, in writing, the worker and employer at injury of the reemployment assistance available from the Reserve. The notice shall be in the format the Director prescribes by Bulletin. A notice shall be issued upon:

- (a) Acceptance or reopening of a disabling claim;
- (b) Within five days of a worker's release for work by the attending physician;
- (c) Determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and,

(d) Approval of a Claim Disposition Agreement.

(3) The insurer shall provide the Division with the required support information and request reimbursement on an Employer-at-Injury Reimbursement Request form at the end of the Employer-at-Injury Program.

(4) The insurer shall provide the Division with return-to-work information in the form and format the Director prescribes by 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 436-110-280(5)(b), upon the following:

- (a) Claim closure by the Division or the insurer pursuant to ORS 656.268;
- (b) Within 30 calendar days from the insurer's receipt of the earliest Opinion and Order of a Referee, 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.

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(5) The insurer shall assist the worker and employer in completing a reemployment assistance agreement and support information when providing the worker with vocational assistance under OAR 436-120.

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436-110-280 Eligibility for Reemployment Assistance

(1) The general eligibility provisions and Employer-at-Injury Program eligibility provisions or Preferred Worker Program eligibility provisions must be fulfilled to receive reemployment assistance, except for worksite modification assistance as specified in subsection (3)(b).

(2) The general eligibility provisions for an employer are:

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

(b) The employer complies with the Oregon Workers' Compensation Law.

(3) The general eligibility provisions for a worker are:

(a) The worker has an accepted Oregon disabling compensable injury or occupational disease; and,

(b) The worker has not returned to, and (except for the Employer-at-Injury Program) medical evidence indicates the worker will not be able to return to, regular employment under the most recent claim opening. Exceptions are a worker who is able to return to regular employment with substantial worksite modification may be eligible for the Preferred Worker Program as specified in section (5)(c) of this rule, or worksite modification assistance may be provided a worker who is not otherwise eligible for the Preferred Worker Program to allow the worker to return to regular work.

(4) The additional specific eligibility provisions for the Employer-at-Injury Program are:

(a) The employer is the employer at injury;

(b) The employer is reemploying an eligible worker as part of the employer's return-to-work program while the worker's claim is open; and,

(c) The worker is not released for regular employment.

(5) The additional specific eligibility provisions for the Preferred Worker Program are:

(a) The worker has permanent disability as a result of an Oregon claim for an injury or 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; or,

(B) An open claim and the worker has available, immediate employment and documented medical evidence indicates permanent disability will likely be awarded at the time of claim closure; or,

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(C) 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; or,

(D) 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;

(b) 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 capacity to perform the job; or,

(c) The worker is returning to regular employment with substantial worksite modification. The Division shall determine a substantial worksite modification based upon the worker's permanent limitations from compensable disabling Oregon injuries, the required job duties and the extent of the modifications necessary to accommodate the worker's disability.

(6) Reasons for ending reemployment assistance eligibility are:

(a) Misrepresentation or omission of information to obtain assistance;

(b) Failure to provide requested information or cooperate;

(c) Falsification or alteration of a preferred worker card;

(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 claim upon which eligibility was determined receives no award for permanent disability, except for a Claim Disposition Agreement in accordance with ORS 656.236, and the worker does not have a previous claim with an award for permanent disability;

(g) The worker returns to regular employment without substantial worksite modification and a documented demand from the Department has been made for the return of the preferred worker card from the worker;

(h) The claim upon which eligibility was determined is subsequently denied in accordance with ORS 656.262. However, approved reemployment assistance costs incurred prior to the denial will be reimbursed, and compensable injuries occurring prior to the denial during a period of premium exemption will qualify for claim costs reimbursement for the life of the claim, except as cited in OAR 436-110-450;

(i) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-500;

(j) The worker or employer fails to repair or replace a damaged or lost worksite modification as specified in OAR 436-110-200(8)(1); or,

(k) The employer does not maintain Oregon workers' compensation insurance coverage.

(7) Reasons to reinstate reemployment assistance eligibility are:

(a) Reemployment assistance was prematurely ended for reasons beyond the worker's control. Examples of reasons beyond a worker's control may include, but are not limited to,

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breach, default or omission on the part of the employer; the worker returned to work and the job ended prior to claim closure; or,

(b) Eligibility was ended in error; or,

(c) The employer has reinstated or obtained new workers' compensation insurance coverage.

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436-110-320 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 to employ the worker. 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 premium exemption is started, a Preferred Worker Eligibility Card is issued to the worker. This card shows the three-year premium exemption period. Limitations on using the preferred worker card include:

(a) A worker can have only one current valid preferred worker card at a time;

(b) A preferred worker subsequently determined eligible for the program under another claim or claim opening shall discontinue use of a previously issued card when a new card is issued;

(c) A preferred worker card expires three years from the date of issue; and,

(d) A preferred worker card may be reissued upon loss of the original card during and for the three-year period after the original card was issued.

(2) A Preferred Worker Identification Card shall be requested as follows:

(a) At the time of insurer submission of return-to-work information as specified in OAR 436-110-240(4);

(b) Prior to claim closure when the worker has available, immediate employment and meets the eligibility criteria specified in OAR 436-110-280(5)(a)(B). Workers or their representatives may contact the Division directly to request an eligibility determination and a preferred worker card. If the Division receives a telephone request, the Division will issue a written confirmation of the request within 30 days. Upon determining eligibility, the Division will issue a preferred worker card to the worker. If the worker is determined to be ineligible, the Division will issue written notification explaining why the worker is not eligible; and,

(c) Upon claim closure by a Claim Disposition Agreement, a Board's Own Motion or insurer's own motion, the worker or their representative may contact the Division directly.

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(3) The Division will cancel and withdraw a preferred worker card if:

(a) The preferred worker card was issued in error; or,

(b) Any reason for ending reemployment assistance eligibility as specified in OAR 436-110-280(6) applies.

(4) The Division will notify the worker of the cancellation of a preferred worker card. The worker must surrender the card upon demand by the Division. Failure to surrender the card upon demand may result in sanctions against the worker as specified in OAR 436-110-500.

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436-110-360 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;

(c) Issue a notice of available employment to the worker; and,

(d) Make Employer-at-Injury Program purchases as specified in OAR 436-110-200(2).

(3) The insurer shall have on file, signed and dated copies of the work release from the worker's medical service provider, a written copy of the employer's early return-to-work policy and procedures, and the notice of available employment issued to the worker. The notice of available employment shall include:

(a) The reemployment start date, time, wage and hours;

(b) To whom and the location where the worker is to report to work;

(c) A description of the job duties; and,

(d) A copy of the work release.

(4) For worksite modification, the insurer shall obtain a temporary capacities and limitations statement, identify the injury-caused obstacles to employment and make purchases as specified in OAR 436-110-400(7)(e).

(5) Wages subject to reimbursement must have been paid the worker.

(6) The insurer shall not make duplicate Employer-at-Injury Program purchases of items not in use by workers in the Employer-at-Injury Program, or assigned to the workers, except when geographical location of the worksite makes transfer of the item impractical.

(7) The insurer shall end the Employer-at-Injury Program when the worker's claim is closed, the worker is released for 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 shall request reimbursement within one year of the end of the program on an Employer-at-Injury Program Reimbursement Request form with a copy of the notice of available employment and other required information attached.

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436-110-400 Procedure to Use the Preferred Worker Program

(1) The following procedures are to be used to access the Preferred Worker Program.

(2) Premium exemption must be activated in order to use other program incentives, except obtained employment purchases for employment outside the state of Oregon and worksite modification.

(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 received by 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. If the Division does not approve premium exemption, the Division will issue written notification explaining why premium exemption cannot be approved; or,

(B) When an eligible worker without a Preferred Worker Identification Card accepts employment with premium exemption requested, the worker or employer shall submit a written request to the Division, or call the Division, within 90 days of the date the worker starts work. If the Division receives a telephone notice, the Division will issue a written confirmation of receipt of the telephone request within 30 days. Upon the Division determining eligibility as specified in OAR 436-110-230, premium exemption will begin the date the worker started work. If the worker is not eligible or premium exemption cannot be approved, the Division will issue written notification explaining ineligibility or why premium exemption cannot be approved; 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 received by 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 employment began, whichever is later. If the Division does not approve premium exemption, the Division will issue written notification explaining why premium exemption cannot be approved.

(b) Upon approval of premium exemption, the Division will issue the worker a Preferred Worker Eligibility Card which shows the premium exemption period. 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;

(c) A Preferred Worker Eligibility Card may be used by the worker to obtain new employment and to provide subsequent employers with premium exemption for the remainder of the three-year premium exemption period;

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(d) Employers who subsequently employ a preferred worker shall copy the Preferred Worker Eligibility Card as evidence of premium exemption, one copy sent to the insurer as notice that a preferred worker is employed using premium exemption, and one copy kept on file by the employer. The card shall be returned to the worker; and,

(e) If a preferred worker incurs a compensable injury or occupational disease during the premium exemption period, the employer shall notify the insurer of the injury and write "preferred worker" in the left-hand margin of Form 801, and provide a copy of the worker's Preferred Worker Eligibility Card. If the employer fails to write "preferred worker" 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. When this occurs, the insurer must correct all records previously filed which include claim costs in any dividend, retrospective rating or any claim valuation for experience rating performed.

(3) Claim costs 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.

(a) The insurer must file a notice of claim acceptance, as specified in OAR 436-60, with the Division within 14 days of claim acceptance. Failure to file the required notice may result in non-reimbursement of claim costs. When failure to file a notice occurs, the claim shall not be charged back to the employer or used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premium or premium assessment with the present or a future insurer;

(b) The insurer shall request claim costs reimbursement as follows:

(A) All requests for reimbursement shall be made within one year of payment;

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

(i) 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 Reserve or Reopened Claims Reserve;

(ii) Payment certification statement; and,

(iii) Any other information deemed necessary by the Division.

(c) 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) Claim costs for any injury after the effective date of these rules when a notice of claim acceptance has not been sent to the Division as specified in subsection (3)(a);

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

(D) Costs incurred due to inaccurate, untimely, or improper processing of the claim and

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those procedures outside generally accepted claims management processes;

(E) Penalties, fines or filing fees;

(F) Disposition amounts in accordance with ORS 656.236 and ORS 656.289, not previously approved by the Division; and,

(G) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Reserve, Retroactive Reserve or any other reserve.

(d) 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 subsection (b) 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; and,

(F) The insurer failed to follow generally accepted claim management processes, procedures and practices.

(e) If the conditions described in subsections (d)(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.

(f) If a claim is denied, the insurer shall receive reimbursement for claim costs, as determined by the Division, according to these rules; and,

(g) A Claim Disposition Agreement, according to ORS 656.236, or a Disputed Claim Settlement, according to ORS 656.289, of a claim subject to claim cost reimbursement from the Reserve 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 request for approval of the proposed disposition shall include:

(i) A copy of the proposed disposition which specifies the proposed assistance from the Reserve and contains a signature line for Division approval;

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(ii) A written explanation of how the calculations for the amount of assistance from the Reserve were made; and,

(iii) Other information as required by the Division.

(C) A claim's future liability and the proposed contribution from the Reserve must be a reasonable projection, as determined by the Division, in order to be approved for reimbursement from the Reserve.

(4) 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 received by the Division within 90 days of the date the worker starts work, except as specified in subsection (2)(a)(C). Upon Division approval, the wage subsidy will begin the date the worker started work, or the date premium exemption is approved as provided in subsection (2)(a). If the wage subsidy is not approved, the Division will issue written notification explaining why the wage subsidy was not approved.

(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 to the employer;

(c) The employer may request reimbursement based on the wage agreed to on the Wage Subsidy Agreement 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. But the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the wage subsidy; and,

(d) Requests for reimbursement shall be made no more frequently than once every two weeks. A Wage Subsidy Reimbursement Request must include a copy of the worker's pay records or statement of earnings compiled according to generally accepted accounting procedures.

(5) Obtained employment purchases may be requested by a preferred worker not receiving vocational assistance under OAR 436-120, as follows:

(a) The worker or insurer shall call or write the Division directly for assistance in receiving obtained employment purchases;

(b) The Obtained Employment Purchases Agreement must be completed and signed by the worker and submitted to the Division. The agreement must be received by the Division with an itemized list of items to be purchased, or that were purchased, the quantity, unit cost, total cost, the vendor name and address. The worker must also indicate whether reimbursement will be requested or an Authorization for Expenditure from the Reserve is desired;

(c) Upon Division approval, a copy of the agreement will be sent to the worker with either an Obtained Employment Purchases Reimbursement Request or a completed Authorization for Expenditure as defined in subsection (7)(b). If the obtained employment

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purchase is not approved, the Division will issue written notification explaining why the obtained employment purchase was not approved;

(d) A worker or insurer shall request reimbursement by submitting to the Division a completed Obtained Employment Purchases Reimbursement Request with an invoice or receipt indicating "paid" for the item purchased. Reimbursement will be made for only those items and costs approved and paid;

(e) An Authorization for Expenditure may be issued to the worker and vendor jointly for obtained employment purchases as specified in OAR 436-110-200(7), except for the cost of meals and lodging required in association with a worker moving or attending a class or a course of instruction;

(f) A check may be issued to the worker for reasonable costs of meals, mileage and lodging due to moving, or to attend a class or course of instruction as allowed in OAR 436-110-200(7)(d) and (f) when overnight travel is required. A receipt for commercial lodging is required verifying funds were expended as agreed for all purchases. Failure to provide complete and accurate receipts shall disqualify the party to whom funds were advanced from receiving further reemployment assistance, reimbursement under the claim for which services were provided or cause the party to be ordered to repay funds advanced including the Department's costs to recover funds.

(6) A worksite modification may be requested by a worker, employer or insurer and costs reimbursed as follows:

(a) The worker, employer or insurer may contact the Division directly for worksite modification assistance. The worker, employer or insurer may perform a worksite modification with a cost of \$2,500 or less without Division involvement. However, a completed and signed Worksite Modification Agreement must be approved by the Division to be effective. A worksite modification with a cost of over \$2,500 requires prior Division approval and involvement as specified in OAR 436-110-200(8)(f);

(b) Upon contact from the worker, employer or insurer, 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 must be completed and signed by the worker and employer. The agreement must be sent to the Division with the required support information. For workers with a preferred worker card, the support information specified in subsection (e)(C) and (F) through (M) of this rule shall be completed. For workers without a preferred worker card, the support information specified in subsection (e)(D) through (M) of this rule shall be completed;

(d) When the cost of the modification is over \$2,500, after obtaining Division approval, the information required in (e)(A) through (M) must be completed. The required support information must be submitted to the Division. If the proposed modification is appropriate, a Worksite Modification Agreement will be issued by the Division for the worker's and employer's signatures;

(e) Worksite modification support includes the following:

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(A) The employer's legal name, "doing business as" (DBA) name, address, telephone number, Workers' Compensation Division (WCD) Employer Registration number, workers' compensation insurer, Federal Tax Identification number and Unemployment Insurance number;

(B) The worker's name, address, telephone number, WCD file number, insurer claim number, date of injury, social security number and wage-at-injury;

(C) Whether the employment is with the employer-at-injury or a new employer, regular or new employment, the job title, Dictionary of Occupational Titles (DOT) code and wage;

(D) The eligibility criteria cited in OAR 436-110-280(3) and (5) for those workers without a preferred worker card;

(E) Whether the worker has an exceptional disability as defined in OAR 436-110-200(6)(a);

(F) Information indicating the worker possesses the basic knowledge, skills and abilities for the position;

(G) A permanent physical capacities and limitations statement;

(H) A job analysis which includes the duties and physical demands of the job before and after modification and the worker's limitations to performing the job before modification. The worker, employer or Department may require the job analysis be approved by the attending physician before the modification is performed;

(I) Any consultative report relating to the modification, if applicable;

(J) An explanation of how the proposed modification will overcome the worker's limitations;

(K) Identification of whether the modification is to be purchased by the employer, worker, insurer or through an Authorization for Expenditure;

(L) Proof of the worker's ownership, insurance coverage and valid drivers license when the worker's personal vehicle is being modified; and,

(M) An itemized list of the things to be constructed or altered; materials, tools, equipment, fixtures, furnishings, shipping and any other purchases. Include make, model and serial number of the items to be purchased or modified such as tools, equipment and fixtures. Include related rates and costs of labor, material, shipping and any other item or service.

(f) A Worksite Modification Agreement must be completed and signed by the worker and employer and submitted to the Division. Upon Division approval, copies of the agreement will be sent to the employer, worker and insurer. The party purchasing the modification item will be sent either a Worksite Modification Reimbursement Request or an Authorization for Expenditure. If the worksite modification is not approved, the Division will issue written notification explaining why the worksite modification was not approved;

(g) The worker, employer or insurer shall request reimbursement by submitting to the Division a completed Worksite Modification Reimbursement Request with an invoice or receipt indicating "paid" for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and,

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(h) An Authorization for Expenditure for a worksite modification may be issued by the Division to the employer and vendor jointly for property assigned to the employer. An Authorization for Expenditure may be issued by the Division to the worker and vendor jointly for property assigned to the worker.

(7) Reemployment assistance costs may be reimbursed or an Authorization for Expenditure may be issued to allow an expenditure from the Reserve under the following conditions:

(a) The Department shall not purchase directly or otherwise assume responsibility for worksite modifications or obtained employment purchases;

(b) An Authorization for Expenditure becomes effective only when signed by the Division. An "Authorization for Expenditure" is a voucher form issued by the Division which authorizes an employer or worker to purchase specific reemployment assistance items or services using funds from the Reserve;

(c) Reimbursement of costs or an Authorization for Expenditure 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;

(d) 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;

(e) If the cost for a single item is over \$1,000, or the cost for items purchased from a single vendor 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 provided. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to, past vendor performance and vendor availability to service or maintain the item; and,

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

(8) Once the Division determines a worker's eligibility for the Preferred Worker Program and there is an active Reemployment Assistance Agreement, the Division will not end eligibility if the claim is subsequently closed without an award for permanent disability, through approval of a Disputed Claim Settlement pursuant to ORS 656.289, or a denial pursuant to ORS 656.260, until termination of the agreement. 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.

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436-110-450 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 insurer shall maintain case files, notices, 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 Division reserves the right to visit the worksite to determine compliance with the agreement under which reemployment assistance has been provided.

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436-110-500 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 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; and,

(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 Agreement or these rules, failed to return required receipts or invoices, submitted false reimbursement requests or job analyses or established a pattern of unreasonably terminating workers employed under a Reemployment Assistance 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;

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

(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 Agreement or these rules, failed to return a card or required receipts or invoices, 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; or,

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

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