



Worker Leasing Oregon Administrative Rules Chapter 436, Division 180

Effective July 1, 2018

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NOTE: These rules are adopted as new division 180 of OAR chapter 436. Prior rules governing worker leasing were in OAR 436-050. Please note that division 050 will still include rules 0003, 0005, and 0008, but that rules 0400 through 0480 have been repealed (as of 7/1/2018). For a list of historical rules, visit:

https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
WORKER LEASING**

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 180**

Summary of changes effective July 1, 2018:

- Adopted rule 0003 describes the purpose of the rules in division 180 and explains that the director may waive procedural rules as justice requires, unless otherwise obligated by statute.
- Adopted rule 0005 defines words and terms used in division 180.
- Adopted rule 0008 describes procedures for parties to request administrative review and hearings; rule 0008 also adopts specific timeframes for requests for hearing on orders denying an application for a worker leasing license and emergency orders of suspension or revocation.
- Adopted rule 0100 explains responsibilities of worker leasing companies to provide workers' compensation coverage for their clients, and also when a client's workers' compensation policy coverage extends to leased workers; rule 0100 also states that a person may not obtain workers by contract and for a fee on a non-temporary basis from an unlicensed worker leasing company.
- Adopted rule 0110 describes reporting requirements and timeframes for worker leasing companies – notice of client coverage, changes or corrections to coverage information, termination of client coverage, and reinstatement of coverage.
- Adopted rule 0120 explains how the division distinguishes temporary workers from leased workers; rule 0120 also provides that if a temporary service provider does not maintain contemporaneous written documentation of a temporary placement, the director will investigate to determine if the workers were provided on a temporary basis.
- Adopted rule 0140 describes the qualifications and requirements for a worker leasing license; rule 0140 also describes the application process for full licensing, limited licensing, and renewals; the procedures for denials and disqualifications; and how to appeal a denial or disqualification.
- Adopted rule 0150 describes recordkeeping requirements for worker leasing companies.
- Adopted rule 0155 describes requirements for a self-insured worker leasing company to maintain and report to the National Council on Compensation Insurance (NCCI) separate statistical data for each client.
- Adopted rule 0160 explains the procedures for suspension or revocation of a worker leasing license.
- Adopted rule 0170 explains how the director will monitor and audit worker leasing companies, temporary service providers, and clients.
- Adopted rule 0200 describes potential civil penalties that may be applied for violations of worker leasing statutes, rules, or orders of the director, and that any person or controlling person that knowingly makes a false statement may also be subject to penalties under ORS 656.990.

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436-180-0003 Administration of Rules [Formerly 436-050-0003]**(1) Purpose.**

These rules carry out the provisions of ORS 656.403(4); 656.850; and 656.855 related to worker leasing companies.

(2) Director's discretion.

The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Statutory authority: ORS 656.726(4) and 656.855

Statutes implemented: ORS 656.403(4); 656.850 and 656.855

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0005 Definitions [Formerly 436-050-0005]

Unless a term is defined elsewhere in these rules, the definitions of ORS 656.005 and 656.850 are incorporated by reference and made a part of these rules. For the purpose of these rules, unless the context requires otherwise:

(1) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis. "Client" does not include a person that shares common majority ownership with the person providing workers under contract and for a fee.

(3) "Common majority ownership" means the same person or group of persons owns more than 50 percent of each entity. If an entity owns a majority interest in another entity, which in turn owns a majority interest in another entity, all entities so related are considered to share common majority interest.

(4) "Controlling person" means:

(a) A person who holds an ownership interest greater than or equal to the lesser of:

(A) The average ownership interest of all owners; or

(B) 10 percent;

(b) A person who is an officer or director of a corporation; a member or manager of a limited liability company; a partner of a partnership; or

(c) An individual who has the power to direct or cause the direction of the management, policies, or operation of a worker leasing company.

(5) "Coverage" means assurance that subject workers and their beneficiaries will receive compensation for compensable injuries as provided for under ORS chapter 656 through a workers' compensation insurance policy or by a self-insured employer.

(6) "Days" means calendar days unless otherwise specified.

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

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(8) "Federal Employer Identification Number" or "FEIN" means the reporting number used by the Internal Revenue Service to identify a business entity for federal tax reporting purposes. "FEIN" does not include a Social Security Number or other reporting number used to identify an individual.

(9) "Leased worker" means any worker provided by a worker leasing company to a client on other than a temporary basis, as described in OAR 436-180-0120.

(10) "License" means an Oregon worker leasing license issued by the department under ORS 656.855.

(11) "Person" means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in Oregon.

(12) "Proof of coverage" has the same meaning as in OAR 436-162-0005.

(13) "Worker leasing company" means a person that provides workers to a client, by contract and for a fee, but does not include a person that provides workers to a client on a temporary basis, as described under OAR 436-180-0120. For the purposes of these rules, a professional employer organization (PEO) is a worker leasing company.

(14) "Worker leasing contract" means the written agreement between a worker leasing company and a client that establishes the rights, duties, and obligations of each with respect to leased workers. For the purposes of these rules, the effective date of a worker leasing contract is the first date an Oregon subject worker begins work for a client under the contract.

(15) "Written" means information communicated in writing, and includes electronic records.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.726(4)

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0008 Requests for Hearings or Administrative Review [Formerly 436-050-0008]

(1) Request for hearing on proposed sanctions or civil penalties.

Any person that disagrees with a proposed order or assessment of a civil penalty under ORS 656.735, 656.745, or 656.750 may request a hearing by the board. To request a hearing, the person must:

(a) Mail or deliver a written request to the Workers' Compensation Division within 60 days of the mailing date of the proposed order or assessment; and

(b) Specify, in the request, the reasons why the person disagrees with the proposed order or assessment.

(2) Request for hearing on an action or order of the director.

Any person that disagrees with an action or order of the director under these rules other than as described in section (1) of this rule may request a hearing under OAR 436-001-0019, subject to the following:

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- (a) The request for hearing must be made in writing and must be filed:
- (A) Within 60 days of the mailing date of an order denying an application for initial or renewal license;
 - (B) Within 90 days of an emergency suspension order suspending a license under OAR 436-180-0160(3); or
 - (C) Within 30 days of the mailing date of any other order or notice of action; and
- (b) OAR 436-001 applies to the hearing.

Statutory authority: ORS 656.704 and 656.726(4)

Statutes implemented: ORS 656.704 and 656.745

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

**436-180-0100 Responsibility for Providing Coverage under a Lease Arrangement
[Formerly 436-180-0400]**

(1) General.

Every worker leasing company providing workers to a client must satisfy the requirements of ORS 656.017 and 656.407.

(2) When the worker leasing company must provide coverage.

Except when the client provides coverage as described in section (3) of this rule, when a worker leasing company provides workers to a client, the worker leasing company must provide coverage for the leased workers and any subject workers employed by the client.

(3) When the client provides coverage.

When during the term of the worker leasing contract, the director has proof of coverage for a client-purchased policy on file, or when the client is a self-insured employer:

- (a) The client's coverage extends to the leased workers and any subject workers employed by the client; and
- (b) The client will be considered a noncomplying employer if it allows its coverage to terminate and continues to lease or employ any subject workers, unless the client obtains new coverage or the worker leasing company has notified the director that it provides coverage for the client under OAR 436-180-0110(1).

(4) Leasing from more than one worker leasing company.

A client may not lease workers from more than one worker leasing company at a time unless the client provides coverage as described under section (3) of this rule.

(5) Providing coverage to another worker leasing company.

A worker leasing company may not provide coverage for another worker leasing company doing business in Oregon or any other state. This section does not apply when:

- (a) Two or more worker leasing companies that share common majority ownership are included as named insureds on a single policy; and
- (b) Each worker leasing company separately meets the requirements of ORS 737.270(4).

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(6) Leasing from unlicensed worker leasing company.

No person may obtain workers by contract and for a fee on a non-temporary basis from an unlicensed worker leasing company.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.850

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0110 Notice of Client Coverage; Changes to Coverage Information; Termination; Reinstatements [Formerly 436-050-0410]

(1) Notice of client coverage.

When a worker leasing company provides coverage to a client under OAR 436-180-0100(2), the worker leasing company must file written notice with the director and its insurer, using [Form 2465](#), "Worker Leasing Notice," subject to the following:

- (a) The Form 2465 must be filed within 30 days after the effective date of the worker leasing contract; and
- (b) The Form 2465 must be correct, complete, signed by an authorized representative of the worker leasing company, and must include:

(A) The client's:

- (i) Legal name and assumed business names, if any;
- (ii) FEIN;
- (iii) Type of ownership;
- (iv) North American Industry Classification System Code;
- (v) Governing class code or National Council on Compensation Insurance (NCCI) code;
- (vi) Phone number, email address, and mailing address; and
- (vii) Street address of Oregon location; and

(B) The worker leasing company's:

- (i) Legal name and assumed business names, if any;
- (ii) FEIN;
- (iii) Oregon worker leasing license number;
- (iv) Effective date of Oregon client coverage; and
- (v) Contact name and phone number.

(2) Changes or corrections to client coverage information.

A worker leasing company must notify the director and its insurer of changes or corrections to information provided under section (1) of this rule using [Form 3270](#), "Worker Leasing Update Notice," within 30 days after the effective date of a change, or knowledge a correction is needed.

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(3) Termination of client coverage.

A worker leasing company may terminate its obligation to provide coverage to a client by providing written notice of the termination, subject to the following:

- (a) The worker leasing company may use [Form 3271](#), "Worker Leasing Termination Notice," to satisfy the requirements of this section;
- (b) The notice must state:
 - (A) The requested effective date of the termination;
 - (B) The reason for the termination;
 - (C) The client's:
 - (i) Legal name and assumed business names, if any;
 - (ii) FEIN;
 - (iii) Phone number, email address, and mailing address; and
 - (D) The name, phone number, and signature of an authorized representative of the worker leasing company;
- (c) The notice must be sent to the client's last-known address by U.S. mail, and copied to the worker leasing company's insurer and the director;
- (d) The notice must be sent within 30 days after the final date of the lease arrangement, or knowledge that the client obtained other coverage;
- (e) Regardless of the requested effective date stated under paragraph (3)(b)(A), termination of the worker leasing company's obligation to provide coverage to the client will not be effective until at least:
 - (A) The 30th day after the notice is received by the director; or
 - (B) The effective date of other coverage for the client that has been filed with the director.

(4) Reinstatement of client coverage.

When a worker leasing company reinstates coverage to a client following a termination under section (3) of this rule, the worker leasing company must notify the director using [Form 5361](#), "Worker Leasing Reinstatement Notice," subject to the following:

- (a) The Form 5361 must be filed within 30 days after the reinstatement becomes necessary; and
- (b) The Form 5361 must be correct, complete, signed by an authorized representative of the worker leasing company, and must include:
 - (A) The client's:
 - (i) Legal name and assumed business names, if any;
 - (ii) FEIN;

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- (iii) Phone number, and
- (iv) Email address, if known;
- (B) The worker leasing company's:
 - (i) Legal name and assumed business names, if any;
 - (ii) FEIN;
 - (iii) Oregon worker leasing license number; and
 - (iv) Contact name and phone number.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.850

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0120 Temporary Worker Distinguished from Leased Worker [Formerly 436-050-0420]

(1) Temporary service providers.

A person that provides a worker to a client by contract and for a fee will be considered a temporary service provider if the worker is provided on a temporary basis, subject to the following:

(a) "Temporary basis" means the worker was provided to supplement a client's regular workforce for a special situation, as a student worker, or as a probationary hire as described under ORS 656.850(1)(b). The worker will be considered to be provided on a temporary basis if there is contemporaneous written documentation of the placement;

(b) "Contemporaneous written documentation" means documents that are created at the time the temporary service provider and client make the arrangements for placement of the worker. The documents must indicate the expected duration of the placement, and:

(A) If the worker was provided to supplement a client's regular workforce for a special situation, the documentation must describe the special situation. A special situation includes, but is not limited to:

- (i) An employee absence or leave, from which the employee is expected to return;
- (ii) A shortage in skilled professional staff, whether licensed or not, for a known duration of time. Supporting documentation may include license information, and must establish whether the worker is provided to supplement or to satisfy a client's need for the skill;
- (iii) A seasonal or sporadic increase in workload that requires assistance in addition to the client's regular workforce. Documentation must establish the nature of the increase in workload; or
- (iv) A special assignment or project outside of the routine activities of the client's business, where the worker will be terminated or assigned to another temporary project upon completion. Documentation must describe the project and how it is outside of the routine activities of the client's business;

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(B) If the worker is provided and paid through a work experience program, the name of the school or institution and the work experience program; or

(C) If the worker is provided as a probationary new hire and the worker has a reasonable expectation of transitioning to permanent employment with the client, evidence that the client established a probationary period in its overall employment selection program before obtaining workers from the person. Evidence may include copies of the client's written program, or a written agreement between the temporary service provider and the client establishing the probationary period before workers were provided; and

(c) Either the person providing the worker or the client must provide the contemporaneous written documentation to the director upon request. If a person fails to provide the contemporaneous written documentation, the director will investigate to determine if the worker was provided on a temporary basis. If the director determines that the worker was provided on other than a temporary basis, the person will be considered a worker leasing company.

(2) Persons providing leased and temporary workers.

If a person providing workers on both a leased and temporary basis does not maintain the records required under OAR 436-180-0150(2), all workers will be considered to be leased workers.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.850

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0140 Qualifications, Applications, and Renewals for License as a Worker Leasing Company [Formerly 436-050-0440]

(1) Prohibition against leasing workers without a license.

No person may perform services as a worker leasing company in Oregon without a valid license.

(2) Qualification for license.

To qualify for an initial license or renewal, a person must:

(a) Be registered and authorized to do business in Oregon under ORS chapter 58, 60, 62, 63, 65, 67, 70, or 648, as applicable, or be a municipal or public corporation as defined in ORS 297.405;

(b) Maintain coverage under ORS 656.017;

(c) Submit a complete application under this rule and be approved for licensure; and

(d) Upon approval, pay the required licensing fee of \$2,050.

(3) Application for full leasing license.

Except as described in section (4) of this rule, each applicant for an initial license must submit [Form 2466](#), "Worker Leasing License Application." The form and accompanying documentation must include:

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- (a) Complete information for the applicant, including:
- (A) Legal and assumed business names;
 - (B) Mailing address;
 - (C) Phone number;
 - (D) FEIN;
 - (E) Physical address of the principal place of business;
 - (F) Names and contact information, including a phone number and valid email address, for at least two representatives who are authorized to respond to inquiries about licensing, leasing, and coverage;
 - (G) A disclosure of all states where the applicant operates as a worker leasing company, including identification numbers and expiration dates of any licenses, registrations, recognitions, or certifications and disclosure of any that are not in good standing;
 - (H) Signed releases for verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service;
 - (I) Written procedures that demonstrate how the applicant will ensure its clients provide adequate training, supervision, and instruction to meet the requirements of ORS chapter 654;
 - (J) A description of any present or prior experience of providing workers by contract and for a fee in any state;
 - (K) A record of any proceedings related to bankruptcies, liens, default, or insolvency, including full details of the:
 - (i) Nature and dates of the actions;
 - (ii) Outcomes, and conditions imposed, including but not limited to: administrative orders, lawsuits, judgments, and discharges or permitted resignations;
 - (iii) Name and location of the court or jurisdiction, case numbers, and dates of any past, current, or pending proceedings; and
 - (iv) Identification numbers of any licenses, registrations, recognitions, or certifications affected by the actions;
 - (L) A record of any civil or criminal actions involving or demonstrating dishonesty or misrepresentation, including but not limited to fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering; or securities, investments, or insurance violations on the part of the applicant or any controlling person. Records of such actions must include full details of:
 - (i) The nature and dates of the actions;

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(ii) Outcomes, sentences, and conditions imposed, including but not limited to administrative orders, charges, guilty pleas, pleas of no contest, criminal convictions, lawsuits, judgments, and discharges or permitted resignations;

(iii) Name and location of the court or jurisdiction, case numbers, and dates of any past, current, or pending proceedings; and

(iv) Identification numbers of any licenses, registrations, recognitions, or certifications affected by the actions;

(M) A record of any administrative, civil, or criminal actions against the applicant by a regulatory agency of any state regarding worker leasing activities. Records must include full details of:

(i) The nature and dates of the actions;

(ii) Outcomes, sentences, and conditions imposed, including but not limited to administrative orders, charges, guilty pleas, pleas of no contest, criminal convictions, lawsuits, judgments, and discharges or permitted resignations;

(iii) Name and location of the court or jurisdiction, case numbers, and dates of any past, current, or pending proceedings; and

(iv) Identification numbers of any licenses, registrations, recognitions, or certifications affected by the actions;

(b) Complete information for each controlling person, including:

(A) Full name, position, and date of birth;

(B) Any other names used;

(C) Residential and business address;

(D) Phone number;

(E) Email address;

(F) The information required under paragraphs (3)(a)(J) through (M) of this rule;

(c) A notarized affidavit from an authorized representative of the applicant and a statement from each controlling person verifying the information provided is complete and truthful, and that there is no omission of material fact; and

(d) Any additional information requested by the director.

(4) Application for limited leasing license.

Notwithstanding section (3) of this rule, a person may apply for a limited leasing license by submitting [Form 5362](#), "Worker Leasing License Application - Limited."

(a) To qualify for a limited license, the person must:

(A) Be licensed or certified in a state that the director has determined has requirements substantially similar to the requirements of these rules;

(B) Have no more than:

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- (i) Two Oregon clients; and
 - (ii) Five leased workers, in total;
- (C) Be domiciled in a state other than Oregon;
- (D) Not maintain an Oregon location; and
- (E) Not directly solicit clients located or domiciled in Oregon;
- (b) The application and accompanying documentation must include:
 - (A) The information required under paragraphs (3)(a)(A) through (I) of this rule;
 - (B) A notarized signature of an authorized representative of the applicant; and
 - (C) Any additional information requested by the director;
- (c) Upon approval of the application under section (5) of this rule, the applicant must pay the required licensing fee of \$2,050; and
- (d) After the license is issued, the licensee must submit a full application under section (3) of this rule within 30 days after the date it no longer qualifies for a limited license under subsection (4)(a).

(5) Review of application.

The director will review complete applications. Following receipt of all information required under section (3) or (4) of this rule:

- (a) The director may request additional information to further clarify the information and documentation submitted with the application;
- (b) The director may conduct a background investigation of the applicant, an owner, or any controlling person. Information learned through a background investigation, or other information submitted during the application process, may be the basis for the director to refuse to issue or renew a license, or to disqualify the applicant or a controlling person from making further application; and
- (c) The director will notify the applicant of the decision to approve or deny the application in writing:
 - (A) If the application is denied, the notice will include the reason for the denial and how to appeal the decision; or
 - (B) If the application is approved, the director will issue a license upon receipt of the \$2,050 licensing fee under subsection (2)(d) of this rule.

(6) License renewal.

A license will automatically expire two years after the date it was issued unless renewed by the licensee. To renew a license, the worker leasing company must:

- (a) If the license was applied for under section (3) of this rule, submit a complete [Form 5364](#), "Worker Leasing License Application – Renewal," to the director at least 90 days

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before the expiration of the current worker leasing license. The form and accompanying documentation must include:

- (A) The information required under paragraphs (3)(a)(A) through (I) of this rule;
- (B) Disclosure of any information required under paragraphs (3)(a)(K) through (M) of this rule that has not been previously disclosed to the director;
- (C) Complete information for each controlling person, including:
 - (i) Full name, position, and date of birth;
 - (ii) Any other names used;
 - (iii) Residential and business address;
 - (iv) Phone number;
 - (v) Email address; and
 - (vi) Disclosure of any information required under paragraphs (3)(a)(K) through (M) of this rule that has not been previously disclosed to the director;
- (D) A notarized affidavit from an authorized representative of the applicant and a statement from each controlling person verifying the information provided is complete and truthful, and that there is no omission of material fact; or
- (b) If the license was applied for under section (4) of this rule, submit a complete [Form 5362](#), "Worker Leasing License Application – Limited," as described under subsection (4)(b) of this rule; and
- (c) Submit any supplemental material necessary to establish a complete application, including any information requested by the director, at least 45 days before expiration of the current license; and
- (d) Upon application approval, pay the required licensing fee of \$2,050.

(7) Changes and corrections to application information.

The worker leasing company must notify the director in writing of any changes or corrections to information provided in any application approved under this rule within 30 days of the effective date of the change or knowledge of incorrect information.

(8) Electronic submission of application materials.

Notwithstanding any other section of this rule, with the director's prior authorization, an applicant may submit application materials electronically using the appropriate application form or an electronic equivalent that contains all of the information required by this rule.

(9) Denial of application.

The director may deny an application for initial license or renewal for reasons including, but not limited to:

- (a) Misrepresentation of information submitted in the application;
- (b) Failure to meet any of the requirements of ORS 656.850, 656.855, or these rules;

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- (c) Denial of a previous application for, or prior suspension or revocation of, a worker leasing license by the director;
- (d) Denial, suspension, or revocation of a license, registration, or certification, or other disciplinary action by any governmental agency or entity;
- (e) Having exercised authority, control, or decision-making responsibility concerning any worker leasing company during a time that company had its authorization to provide worker leasing services denied, suspended, revoked, or restricted;
- (f) Having been the subject of an order, adverse to the applicant or controlling person, by any governmental agency or entity in connection with any worker leasing activity;
- (g) Having been found by any governmental agency or entity to have made a false or misleading statement, material misrepresentation, or material omission, or to have failed to disclose material facts;
- (h) Violations of worker leasing statutes or regulations in any state;
- (i) Failure to establish minimum experience, training, or education that demonstrates competency in providing worker leasing services;
- (j) Nonpayment of taxes, liens, fees, assessments, civil penalties, or any other moneys due the State of Oregon or another jurisdiction;
- (k) Having filed for bankruptcy, been declared bankrupt, or been the subject of other proceedings related to insolvency, default, or delinquency;
- (l) Having been convicted of, or pleaded guilty or no contest to, any felony or misdemeanor involving dishonesty or misrepresentation, including but not limited to fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering; or violations involving securities, investments, or insurance violations on the part of the applicant or any controlling person; or
- (m) Having failed to provide documents requested by the director.

(10) Disqualification.

The director may disqualify an applicant or controlling person from applying for a license in the future for any of the reasons listed under section (9) of this rule. If an applicant or controlling person is disqualified:

- (a) The applicant or controlling person may not reapply for a license for at least two years from the disqualification date; and
- (b) The disqualification may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person, owner, or controlling person.

(11) Appeal of denial or disqualification.

An applicant or controlling person may appeal a denial or disqualification under this rule as provided in OAR 436-180-0008 and OAR 436-001.

Statutory authority: ORS 656.726(4) and 656.855

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Statutes implemented: ORS 656.855

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0150 Recordkeeping and Reporting Requirements [Formerly 436-050-0450]

(1) Required records.

A worker leasing company must maintain and make the following records available for review by the director, upon request:

- (a) Copies of and documentation of filing for signed forms and notices required under OAR 436-180-0110. All forms and documentation must be maintained for three years after the date coverage provided to a client was terminated;
- (b) Copies of signed worker leasing contracts for three years after the termination date of the contract;
- (c) Payroll records for the most recent seven years, including records that identify the name, hire date, termination date, and work location for:
 - (A) Leased workers subject to coverage by the worker leasing company;
 - (B) Leased workers not subject to coverage by the worker leasing company;
 - (C) Administrative personnel, and other subject workers directly employed by the worker leasing company; and
 - (D) Workers provided to clients on a temporary basis, if any.

(2) Records of leased and temporary workers.

If a worker leasing company both provides leased workers and provides workers on a temporary basis, the worker leasing company must maintain written records that specify which workers are leased and which workers are provided on a temporary basis.

Statutory authority: ORS 656.726(4) and 656.855

Statutes implemented: ORS 656.855

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0155 Reporting Requirements of a Self-Insured Worker Leasing Company [Formerly 436-050-0455]

(1) Reporting of client statistical data.

A self-insured worker leasing company must maintain and report to the National Council on Compensation Insurance (NCCI) separate statistical data for each client the self-insured worker leasing company provides coverage for under OAR 436-180-0100(2). Reporting must be according to the uniform statistical plan prescribed by the director under ORS 737.225(4) and OAR 836-042-0045.

(2) Records relating to client statistical data.

Records relating to the client statistical data for self-insured worker leasing companies must be made available to NCCI, upon request.

Statutory authority: ORS 656.726(4) and 656.855

Statutes implemented: ORS 656.403(4) and 656.855

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0160 Suspension or Revocation of License [Formerly 436-050-0460]

(1) General.

The director may suspend or revoke a worker leasing license for reasons including, but not limited to:

- (a) Failure to comply with the provisions of ORS chapters 654, 656, 659, 659A, 731 or 737; or these rules;
- (b) Denial, suspension, or revocation of a license, registration, or certification, or other disciplinary action by any governmental agency or entity involving worker leasing activities;
- (c) Nonpayment of taxes, fees, assessments, civil penalties, or any other moneys due the State of Oregon or another jurisdiction;
- (d) Filing for bankruptcy, being declared bankrupt, or being the subject of other proceedings related to default on or delinquency of payment of financial obligations;
- (e) Insolvency, if the worker leasing company's liabilities exceed its assets or the worker leasing company cannot meet its financial obligations;
- (f) A conviction, guilty plea, or plea of no contest, within the last 10 years, for any felony or misdemeanor involving dishonesty or misrepresentation, including but not limited to fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering; or violations involving securities, investments, or insurance violations on the part of the applicant or any controlling person; or
- (g) The worker leasing company or controlling person is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker leasing business.

(2) Show-cause hearing.

Except as described under section (3) of this rule, the director will not suspend or revoke a worker leasing license until the worker leasing company has been given notice and the opportunity to be heard through a show-cause hearing with the director.

- (a) During the show-cause hearing, the worker leasing company will be provided an opportunity to:
 - (A) Present evidence regarding any proposed orders by the director to suspend or revoke the worker leasing company's license; and
 - (B) Give reason why the worker leasing company should be permitted to continue performing services as a worker leasing company.
- (b) A show-cause hearing may be held at any time the director finds that a worker leasing company has failed to comply with the requirements of ORS chapter 656, these rules, or the orders of the director.

(3) Emergency order of suspension or revocation.

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Notwithstanding section (2) of this rule, the director may immediately:

- (a) Suspend a license by issuing an "emergency suspension order" if:
 - (A) The worker leasing company fails to maintain coverage; or
 - (B) The director finds there is a serious danger to public health or safety; or
- (b) Revoke a license upon discovery of a misrepresentation in the information submitted in the worker leasing application.

(4) Suspension of license.

If the director suspends a worker leasing license:

- (a) The worker leasing company and any controlling person may not lease workers to clients for a specified period of time, up to two years;
- (b) The suspension may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person; and
- (c) When the suspension expires, the worker leasing company or controlling person may petition the director to resume its worker leasing company activities, or apply to renew its worker leasing license under OAR 436-180-0140.

(5) Revocation of license.

If the director revokes a worker leasing license:

- (a) The worker leasing company, and any controlling person may not lease workers to clients for at least five years;
- (b) The revocation may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person; and
- (c) After a revocation has been in effect for five years or longer, the worker leasing company or controlling person may reapply for license under OAR 436-180-0140.

(6) Appeal of suspension or revocation.

A proposed and final order of suspension or revocation issued under this rule may be appealed under OAR 436-180-0008 and OAR 436-001.

Statutory authority: ORS 656.726(4) and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0170 Monitoring and Auditing [Formerly 436-050-0470]

(1) Generally.

The director will monitor and conduct periodic audits of employers as necessary to ensure compliance with the worker leasing company licensing and performance requirements.

(2) Disclosure of worker leasing records.

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A worker leasing company must make all records required by these rules available to the director upon request. The records must be made available at no cost to the director.

(3) Inspection of books, records, and payroll.

Under ORS 656.726 and 656.758, the director may inspect the books, records, and payrolls of employers pertinent to the administration of these rules. Employers must make all pertinent books, records, and payrolls available for inspection by the director upon request and without cost.

(4) "Employer" defined.

For the purposes of this rule, "employer" includes a worker leasing company, temporary service provider, and client.

Statutory authority: ORS 656.726(4) and 656.855

Statutes implemented: ORS 656.855

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18

436-180-0200 Assessment of Civil Penalties [Formerly 436-050-0480]

(1) Failure to comply with statutes, rules, and orders of the director.

The director may assess a civil penalty against a worker leasing company that fails to comply with the requirements of ORS 656.850 or 656.855, OAR 436-180, or the orders of the director.

(2) Failure to comply with OAR 436-180-0170.

The director may assess a civil penalty against any employer that fails to respond to requests for information or fails to meet the requirements of 436-180-0170. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(3) Leasing workers without a license.

The director may assess a civil penalty against any person who is found to be operating a worker leasing company without a valid license. For the purposes of this section, any month or part of a month a person provides leased workers to a client without a valid license is a separate violation.

(4) Obtaining workers from an unlicensed worker leasing company.

The director may assess a civil penalty against an employer that leases or continues to lease workers from an unlicensed worker leasing company after written notice of such violation has been served.

(5) Penalties under ORS 656.990.

Any person or controlling person that knowingly makes any false statement or representation may also be subject to penalties under ORS 656.990.

Statutory authority: ORS 656.726(4) and 656.855

Statutes implemented: ORS 656.745, 656.850, 656.855, and 656.990

Hist: Adopted 6/7/18 as WCD Admin. Order 18-057, effective 7/1/18