

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
EMPLOYER/INSURER COVERAGE RESPONSIBILITY**

436-050-0160 Applying for Certification as a Self-Insured Employer

(1) Required information.

An employer applying for certification as a self-insured employer must submit:

- (a) A completed [Form 1868](#), "Application for Self-Insurance;"
- (b) Proof of an adequate staff qualified to process the employer's claims under OAR 436-050-0150(2);
- (c) The employer's audited financial statements or audited annual reports for the last three fiscal or calendar years, subject to the following:
 - (A) If the audited financial statements of a parent company are provided in place of statements for the employer, the director will not authorize the individual employer to be self-insured under its own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured employer or to separately insure the employer. In the context of this section, a parent company is a legal entity that owns a majority interest in the employer, or owns a majority interest in another entity or succession of entities that own a majority interest in the employer; or
 - (B) If audited financial statements are not available at the time of application, the employer may submit certified financial statements in place of audited financial statements or annual reports. However, if the certified financial statements submitted are insufficient to evaluate the employer's financial ability, the director may require the employer to submit audited financial statements;
- (d) The employer's most recent experience rating modification worksheet and supporting documentation. Applicants with prior Oregon experience who do not submit this data will be assigned a 1.50 experience rating modification pending receipt of the data. All those without prior Oregon experience will be assigned a 1.00 experience rating modification;
- (e) The type, retention, and limitation levels of excess workers' compensation insurance the employer is planning to obtain as required by OAR 436-050-0170;
- (f) If applicable, a service agreement between the employer and service company that has been signed by both parties that meets the requirements of OAR 436-050-0210. The agreement must:
 - (A) Be submitted at least 14 days before the desired date of certification, and be approved by the director before the service company begins processing claims, regardless of the effective date established in the agreement; and
 - (B) The agreement must also contain the location, mailing address, telephone number, and any other contact information of the service company;
- (g) Proof of the employer's ability to provide an acceptable security deposit, including either:
 - (A) Evidence from a surety bond company admitted to do surety business in this state that they will issue a surety bond for the employer, as Principal, and the Oregon

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Department of Consumer and Business Services, Workers' Compensation Division, as Obligee; or

(B) Evidence from a qualified bank that they will issue an irrevocable standby letter of credit for the employer with the Oregon Department of Consumer and Business Services as the beneficiary;

(h) Evidence of an occupational safety and health loss control program in accordance with OAR 437-001 as required by ORS 656.430(10); and

(i) Evidence of:

(A) The employer's authorization to do business in this state under ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable; or

(B) The employer's status as a municipal or public corporation as defined in ORS 297.405.

(2) Review of application.

Within 30 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the employer that the request for certification as a self-insured employer is approved or denied.

(a) If the request is denied, the notice will include the reason for denial; or

(b) If the request is approved, the notice will include:

(A) Confirmation of the type and the amount of the security deposit required;

(B) Approval of the type, retention, and limitation levels of the excess insurance required; and

(C) Approval of a service agreement submitted under OAR 436-050-0110, if applicable.

(3) Issuance of certification.

If approved, the certification of self-insurance will be issued upon receipt of the security deposit and the appropriate excess insurance binder. The effective date of certification will be the first day of the month following the date the certificate is issued, or a later date specified by the applicant.

Statutory authority: ORS 656.430, and 656.726(4)

Statutes implemented: ORS 656.430

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

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436-050-0180 Determination of Amount of Self-Insured Employer's Deposit; Effective Date of Order to Increase Deposit

(1) Indicated security deposit.

Except for self-insured cities, counties, or qualified self-insured employer groups who are exempted under ORS 656.407(3) and OAR 436-050-0185, each self-insured employer is required to maintain a security deposit with the director in an amount determined by the director, subject to the following:

(a) The deposit will not be less than the greater of:

(A) \$100,000;

(B) Future claim liability, including losses incurred but not reported (IBNR), a claims processing administrative cost, and the anticipated assessments payable to the director for the employer's next fiscal year; or

(C) The annual incurred losses for the self-insured employer's last fiscal year, including IBNR, a claims processing administrative cost, and anticipated assessments payable to the director for the employer's next fiscal year;

(b) If the employer is applying for self-insurance, the amount of the initial deposit must not be less than the greater of:

(A) The anticipated assessments payable to the director for the employer's next fiscal year, plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer's Oregon operations for the employer's next fiscal year;

(B) \$300,000 plus \$30,000 additional for each \$100,000 the employer's net worth is below \$2 million; or

(C) The amount of the approved self-insured retention level for the employer's excess workers' compensation insurance;

(c) Assessments payable to the director referred to in this section include moneys and assessments due under ORS 656.506, 656.612, and 656.614;

(d) Claims processing administrative costs will be determined by developing a percentage rate to be applied against the employer's unpaid losses;

(A) The rate will be based on the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year; and

(B) The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:

(i) "**Loss expenses unpaid**" for losses incurred in the latest eight years, divided by

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(ii) **"Losses unpaid"** for losses incurred in the latest eight years; and

(e) Under this section, "Incurred but not reported" (IBNR) will be calculated by applying a loss development factor determined by the director against the employer's incurred losses.

(2) Financial strength adjustment.

If the self-insured employer received a financial strength rating equal to "moderate" under OAR 436-050-0150(5) or OAR 436-050-0260(12), the amount of the deposit determined under section (1) will be increased by the following percentage factors:

- (a) 12 total combined points = no change in calculated deposit;
- (b) 11 total combined points = no change in calculated deposit;
- (c) 10 total combined points = 5%;
- (d) 9 total combined points = 10%;
- (e) 8 total combined points = 15%; or
- (f) 7 total combined points = 20%.

(3) Certified actuarial study.

A self-insured employer may request for its security deposit amount to be determined based on a recommended loss reserve level established by a certified actuarial study in place of the calculations under sections (1) and (2) of this rule. The director may base a self-insured employer's security deposit amount on a certified actuarial study under the following conditions:

- (a) The actuarial study must be certified by an actuary who is a member in good standing of the American Academy of Actuaries;
- (b) The actuarial study must be submitted to the director within seven days after the date of the director's notice establishing the security deposit amount calculated under sections (1) and (2) of this rule;
- (c) The actuarial study must include an estimate or range of estimates of future claim liability and state what provisions for adverse claim development are included in these estimates;
- (d) The actuarial study must identify the confidence levels associated with the recommended loss reserve level or loss reserve range;
- (e) The actuarial study must include a statement of future claim liability, including the employer's incurred but not reported (IBNR) losses;
- (f) Subject to the minimum requirements of ORS 656.407 and this rule, upon the director's review and acceptance of the study, the amount of the security deposit will be based on:
 - (A) The actuarially sound recommended loss reserve level if a single estimate is provided; or

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(B) The 75% confidence level estimate, if an actuarially sound loss reserve range is provided; and

(g) If there is probable cause to believe the recommended loss reserve level or range is not actuarially sound, the director will determine the security deposit under sections (1) and (2) of this rule. Probable cause includes, but is not limited to:

(A) The actuarial study not containing a statement by the actuary that the recommended loss reserve level or range is actuarially sound;

(B) The actuarial study containing a disclaimer regarding the actuary's qualifications or ability to determine the adequacy of the loss reserve level for current or future liabilities; or

(C) The recommended loss reserve level or entire recommended loss reserve range being less than the 75 percent confidence level estimate established in the actuarial study.

(4) Additional factors for security deposit amount.

In determining the amount of the self-insured employer's security deposit the director will take the following factors into consideration:

(a) The financial ability of the employer to pay compensation and other payments due;

(b) The employer's probable continuity of operation;

(c) The employer's financial viability, as determined by the director under OAR 436-050-0150 or OAR 436-050-0260;

(d) Retention and limitation levels of the employer's excess insurance in relation to the employer's financial status;

(e) Changes in the employer's business including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, incurred claims costs, or material growth in self-insured exposure;

(f) The balance of the Self-Insured Employer Adjustment Reserve or the Self-Insured Employer Group Adjustment Reserve; and

(g) The employer's credit rating issued by a nationally recognized statistical ratings organization;

(5) Time frame for compliance.

A self-insured employer must comply with an order of the director to the self-insured employer to increase the amount of its deposit within 30 days of the order. Failure to comply with this rule may result in the assessment of civil penalties, revocation of the employer's certification of self-insurance, or both.

Statutory authority: ORS 656.407, and 656.726(4)

Statutes implemented: ORS 656.407

Hist: Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

Amended 12/22/16 as WCD Admin. Order 16-060, eff. 1/1/17 (Correction)

Amended 12/14/17 as WCD Admin. Order 17-061, eff. 1/1/18

See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

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436-050-0185 Qualifications for Deposit Exemption for Self-Insured Cities, Counties, and Qualified Self-Insured Employer Groups, Application Procedures, Conditions and Requirements, Revocation and Requalification

(1) Requirements to qualify for deposit exemption.

A self-insured city, county, or self-insured employer group that is a municipal or public corporation under ORS 297.405, may apply to be exempt from the security deposit requirements of ORS 656.407(2) and OAR 436-050-0150, if it meets the following requirements:

- (a) The city, county, or qualified self-insured employer group must be in compliance with ORS 656.407(2) and OAR 436-050-0180 as an independently self-insured employer or self-insured employer group for the three consecutive years immediately before applying for the exemption; and
- (b) The city, county, or qualified self-insured employer group must have in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director under ORS chapter 656. The workers' compensation loss reserve account must also be dedicated to and expended only for payment of compensation and amounts due the director by the city or county under ORS chapter 656.

(2) Application for security deposit exemption.

To apply for exemption from ORS 656.407(2), the city, county, or qualified self-insured employer group must submit a written application to the director no later than 45 days before the date the exemption is desired to become effective.

- (a) The application must include the following supporting documentation for review and approval:

- (A) A copy of the city's, county's, or qualified self-insured employer group's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740 that identifies the actuarially sound funded amount in the dedicated workers' compensation loss reserve if not previously filed as required by OAR 436-050-0175(1);
- (B) A copy of the city's, county's, or qualified self-insured employer group's current fiscal year's approved budget documents for internal service funds that state the budgeted amount for the funded workers' compensation loss reserve account;
- (C) A resolution or ordinance passed by the city's, county's, or qualified self-insured employer group's governing body that establishes an actuarially sound and adequately funded workers' compensation loss reserve account that dedicates the workers' compensation loss reserve account to and limits expenditures to only the payment of compensation and amounts due the director under ORS chapter 656. The resolution must also include the director's first lien and priority rights to the full amount of the workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS chapter 656; and

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(D) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, and the procedures, methods, and criteria used in the process of determining the amount funded in their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

(i) The statement must include the city's, county's, or qualified self-insured employer group's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.

(ii) The director may require a city, county, or qualified self-insured employer group to demonstrate its loss reserve account is actuarially sound and adequately funded based on an actuarial study requested under OAR 436-050-0175(3)(d). The actuarial study must include an IBNR estimate and a copy of the study must be provided to the director.

(b) Within 45 days of receipt of all application materials required under this section, the director will review the application and supporting documentation and notify the city, county, or qualified self-insured employer group that the request for exemption is approved or denied.

(A) If denied, the notice will provide the reasons for the denial, any requirements for reconsideration, and the right to administrative review as provided by OAR 436-050-0008.

(B) If approved, the notice will include:

(i) The confirmation of the effective date of exemption;

(ii) Authorization for cancellation of any surety bond or ISLOC held as security under ORS 656.407(2) and OAR 436-050-0180; and

(iii) Procedures for release of any government securities or time deposits held as security under ORS 656.407(2) and OAR 436-050-0180.

(3) Inadequately funded loss reserve accounts.

If the director has probable cause to believe the employer's workers' compensation account is inadequately funded, the director may order a city, county, or qualified self-insured employer group to increase the amount of its workers' compensation loss reserve account and to provide documentation of the increase. The city, county, or qualified self-insured employer group must comply within 30 days of the director's order. Probable cause to believe the workers' compensation loss reserve account is not actuarially sound includes, but is not limited to:

(a) The annual audited financial statement under ORS 297.405 to 297.740 not containing a statement by the auditor that the workers' compensation loss reserve account is adequately funded, or containing a disclaimer regarding the auditor's qualifications or ability to determine adequacy of the loss reserve account; or

(b) For qualified self-insured employer groups required by the director to conduct an actuarial study under OAR 436-050-0175(3)(d) and section (2)(a)(D) of this rule, the

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actuarial study not containing a statement by the actuary that the loss reserve account is actuarially sound, or containing a disclaimer regarding the actuary's qualifications or ability to determine the adequacy of the reserves for current or future liabilities.

(4) Cancellation of self-insurance certification or loss reserve.

A city, county, or qualified self-insured employer group that has been exempted from ORS 656.407(2) and desires to cancel its self-insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve account must:

- (a) Submit a written request to the director at least 60 days before:
 - (A) The desired cancellation date of the self-insured certification; or
 - (B) The effective date of discontinuation of the qualifying workers' compensation loss reserve account;
- (b) If the city, county or qualified self-insured employer group desires to cancel its self-insurance certification:
 - (A) The request under section (a) must comply with OAR 436-050-0200; and
 - (B) Before the effective date of cancellation the city, county, or qualified self-insured employer group must provide a security deposit, as required by the director, in an amount determined under OAR 436-050-0180 and ORS 656.443; and
- (c) If the city, county, or qualified self-insured employer group elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve account:
 - (A) Before the effective date of discontinuation of the qualifying workers' compensation loss reserve account, the city, county, or qualified self-insured employer group must provide a security deposit as required by the director under ORS 656.407(2) and OAR 436-050-0180; and
 - (B) Failure to provide the required security deposit as required under paragraph (A) will result in revocation of the city's, county's, or qualified self-insured employer group's self-insurance certification as of that date.

Statutory authority: ORS 656.407, and 656.726(4)

Statutes implemented: ORS 656.407

Hist: Amended 8/15/14 as WCD Admin. Order 14-059, eff. 9/15/14

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