

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

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**436-050-0170 Excess Insurance Requirements**

**(1) Excess insurance requirements.**

A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS chapter 656 with an insurer authorized to do business in this state, subject to the following:

(a) Except for endorsements requiring pre-approval by the director under sections (3) and (4) of this rule, the policy providing such coverage and any subsequent endorsements must be filed with the director within 30 days after the effective date of the policy or endorsement;

(b) A self-insured public utility with assets in excess of \$500 million as reflected by the employer's audited financial statement submitted in accordance with OAR 436-050-0160 or 436-050-0175, may obtain the required excess workers' compensation insurance coverage from an eligible surplus lines insurer;

(c) The excess insurance policy must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the self-insured employer under ORS 656.614 and 656.443 as if the director were the insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer;

(d) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled;

(A) Coverage must be specific on a per-occurrence basis;

(B) Coverage may include aggregate excess insurance; and

(C) Coverage may include a deductible endorsement acceptable to the director under sections (3) and (4) of this rule;

(e) Excess insurance obtained under this rule does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS chapter 656 and OAR chapter 436. The excess insurance policy may not contain provisions or endorsements that do not comply with Oregon law, including but not limited to, provisions or endorsements that allow the excess insurer to process claims, pay compensation, or change the location where a claim is processed.

(f) A self-insured employer may not transfer claims to any excess insurer or service company acting on behalf of an excess insurer for the processing of the employer's claims, regardless of the types and amounts of excess coverage; and

(g) When an excess insurance policy is canceled by the excess insurer or the employer, a copy of the notice of cancellation must be filed with the director at least 30 days before the effective date of cancellation.

**(2) Self-insured retention level for a self-insured employer group.**

The self-insured retention level for a self-insured employer group's excess insurance policy must not be less than \$300,000.

**(3) Changes in the self-insured retention level.**

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Changes in the self-insured retention level and policy limits of the excess insurance require prior approval of the director. Proposed changes must be submitted to the director for approval at least 30 days before the effective date of the change. The director may require a reduction in the self-insured retention level or an increase in the policy limits by order. When determining and approving the retention and limitation levels of the excess insurance, the director will consider:

- (a) The employer's financial status;
- (b) The employer's financial strength as determined under OAR 436-050-0150 or OAR 436-050-0260;
- (c) The employer's risk and exposure;
- (d) The employer's claim history; and
- (e) The amount of the employer's required security deposit.

**(4) Per-accident deductible endorsements.**

Any endorsements addressing a per-accident deductible in excess of a self-insured employer group's retention level must be approved by the director before the effective date of the endorsement, subject to the following:

- (a) In determining whether to approve a deductible endorsement, the director will consider the group's retention level, policy limits, and the items listed in section (3) of this rule; and
- (b) The director will not approve per-accident deductible endorsements in excess of the retention level that contain language allowing the excess insurer, at its discretion, to limit its obligations under subsection (1)(c) of this rule.

**(5) Director's orders to amend excess insurance.**

A self-insured employer must comply with an order of the director to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance within 30 days after the order's mailing date.

**(6) Revocation for failure to comply with these rules.**

If a self-insured employer does not comply with the requirements of this rule the director may assess civil penalties against the employer, revoke the employer's self-insurance certification, or both. If the director intends to revoke the employer's self insurance certification under this rule:

- (a) The employer will be given written notice;
- (b) The revocation will be effective 30 days from the employer's receipt of the notice; and
- (c) If the employer complies with the requirements of this rule before the effective date of the revocation, the revocation will be canceled and certification will remain in effect.

Statutory authority: ORS 656.430, and 656.726(4); Statutes implemented: ORS 656.430

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

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](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf)