Claims Administration
Oregon Administrative Rules
Chapter 436, Division 060

Note: Following the passage of HB 2800 (2025), this division is being opened to make a housekeeping change to the rule below. Proposed effective July 1, 2027.

436-060-0025 Worker's Weekly Wage Calculation and Rate of Temporary Disability Compensation

(1) Continuation of wages, insured employers.

An employer may not continue to pay wages in place of temporary disability benefits. However, with the worker's consent, the employer may pay the worker amounts in addition to the temporary disability benefits due to the worker, if the employer:

(a) Identifies temporary disability benefits separately from other payments; and

(b) Does not withhold payroll deductions from the temporary disability benefits.

(2) Continuation of wages, self-insured employers.

Notwithstanding section (1) of this rule, a self-insured employer may continue to pay the same wage at the same pay interval that the worker received at the time of injury. Such payment qualifies as timely payment of temporary disability under ORS 656.210 and 656.212. If the self-insured employer continues to pay wages in place of temporary disability benefits under this section:

(a) Normal deductions including but not limited to, taxes, benefits, and voluntary deductions, must be withheld;

(b) The claim must be classified as disabling;

(c) The self-insured employer must report to the division the rate and duration of temporary disability that would have been paid had wages not continued; and

(d) If the pay interval changes or the amount of wages decreases, the worker must be paid temporary disability as otherwise prescribed by the workers' compensation law.

(3) Rate of compensation, generally.

Except when payments are made under section (2) of this rule, the worker must receive compensation as calculated under ORS 656.210 during the period of temporary total disability, subject to the following:

(a) The benefits of a worker who incurs an injury must be based on the worker's wages at the time of injury and may include regular wages, irregular wages, or both;

(b) The benefits of a worker who incurs an occupational disease must be based on the worker's wages at the time there is medical verification the worker is unable to work because of the disability caused by the occupational disease and may include regular wages, irregular wages, or both. If the worker is not working at the time there is medical verification the worker is unable to work because of the disability caused by the occupational disease, the benefits must be based on the worker's wages at the worker's last regular employment;

(c) The benefits of a worker who was employed in multiple jobs at the time of injury, and who is eligible for supplemental disability under ORS 656.210(2)(b) and OAR 436-060-0035, must be based on the worker's earnings from all eligible subject employment under OAR 436-060-0035;

(d) For a worker with a cyclic schedule, the cycle must be considered to have no scheduled days off; and

(e) When a work shift extends into another calendar day, the date of injury used to determine the wage under this section is the date the employer used for payroll purposes.

(4) Calculation of irregular wages.

If the worker receives irregular wages, the insurer must calculate the worker's irregular wages to determine the worker's average weekly wage based on the weekly average of the worker's irregular wages for the period up to 52 weeks before the date of injury or verification of disability caused by occupational disease, subject to the following:

(a) As used in this section:

(A) "New wage earning agreement" means the worker's wage earning agreement changed for reasons other than only a pay rate change, including but not limited to a change of hours worked or a change of job duties. A job assignment from a temporary service provider or ~~worker leasing company~~professional employer organization as defined in OAR 436-180 is not considered to be a new wage earning agreement.

(B) "Pay rate change" means an increase or decrease in a previously established pay rate. A pay rate change does not include fluctuations in the rate based on the number of hours worked in a period.

(b) If, on the date of injury or verification of disability caused by occupational disease, the worker had been employed by the employer at injury for four weeks or more, and the most recent new wage earning agreement had been in place for four weeks or more, the insurer must average the worker's irregular wages for the period up to 52 weeks of employment before the date of injury or verification of disability caused by occupational disease, subject to the following:

(A) The insurer must exclude any **gap in earnings** of more than 14 consecutive calendar days that was not anticipated in the wage earning agreement;

(B) If the worker began work under a **new wage earning agreement** in the 52 weeks before the date of injury or verification of disability caused by occupational disease, and there has been **no pay rate change** since the beginning of that work, the insurer must average irregular wages only for the weeks worked under the most recent wage earning agreement; and

(C) When there has been a **pay rate change** during the 52 weeks before the date of injury or verification of disability caused by occupational disease, and paragraph (b)(B) of this section does not apply, the insurer must calculate the worker's average weekly hours worked at each pay rate since a new wage earning agreement went into place, but not to exceed 52 weeks. The average weekly hours worked at each pay rate must then be multiplied by the pay rate(s) at the time of injury or verification of disability caused by occupational disease to determine the worker's average weekly wage for these wages. For the purpose of this rule, the "average weekly hours worked" includes all hours paid at an hourly rate which resulted in payment of irregular wages since the new wage earning agreement went into place, but not to exceed 52 weeks. This may include, but is not limited to, pay for regular hours, overtime, vacation, sick leave, paid time off, or bereavement leave. If there are irregular wages not paid at an hourly rate, the worker's average weekly wage under this paragraph must be added to the average of all of those other irregular wages paid at something other than an hourly rate.

(c) If, on the date of injury or verification of disability caused by occupational disease, the worker was employed by the employer at injury for **less than four weeks**, or the worker's most recent new wage earning agreement had been in place for less than four weeks, the insurer must base the rate of compensation on the intent of the worker's wage earning agreement in place at the time of injury or verification of disability caused by occupational disease, as confirmed by the employer and worker.

(5) Calculation of regular wages.

If the worker receives regular wages, the insurer must calculate the worker's regular wages to determine the worker's average weekly wage:

(a) Daily wages must be multiplied by the number of days per week the worker was regularly employed;

(b) Monthly wages must be divided by 4.35; or

(c) Wages for other pay intervals must be calculated on an equivalent basis.

(6) Workers with no wages.

If the worker is a volunteer, adult in custody, or other covered worker that receives no wages, the insurer must calculate the rate of compensation based on the assumed wage used to determine the employer's premium.

(7) Owners and corporate officers.

If the worker is a sole proprietor, partner, officer of a corporation, or limited liability company member, the insurer must calculate the rate of compensation based on the assumed wage used to determine the employer's premium.

(8) Workers employed through a union hiring hall.

For workers employed through a union hiring hall, the insurer must calculate the rate of compensation on the basis of a five-day work week at 40 hours a week, regardless of the number of days actually worked per week.

(a) The rate of compensation for workers employed through a union hiring hall with dates of injury on or after Jan. 1, 2018, must be calculated under this section.

(b) The rate of compensation for workers employed through a union hiring hall with dates of injury from Jan. 1, 2017, through Dec. 31, 2017, must be calculated under this section, unless such calculation would result in a reduction of benefits

(9) One-time bonus.

A one-time bonus (for example, a sign-on bonus or relocation bonus) paid to the worker for accepting a job offer may not be included in the wages used to calculate the worker's weekly wage.

(10) Wage disputes.

If the worker disputes the wage used to calculate the rate of compensation, the insurer must attempt to resolve the dispute by reviewing its records and mathematical calculations, or by contacting the employer to confirm the correct wage. The insurer must then contact the worker with the results of its review and, if the wage was corrected, the new calculation. If the worker does not agree with the wage calculated by the insurer, the worker may request a hearing under OAR 436-060-0008.

Statutory authority: ORS 656.210(2), 656.704, and 656.726(4)
Statutes implemented: ORS 656.210 and 656.704
Hist: Amended 12/19/22 as WCD Admin. Order 22-067, eff. 1/1/23
Amended 6/7/24 as Admin. Order 24-053, eff. 7/1/24
Amended 12/23/25 as WCD Admin. Order 25-055, eff. 1/1/26
Amended 10/15/26 as Admin. Order 26-069, eff. 7/1/27
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.