

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



Retroactive Program
Oregon Administrative Rules
Chapter 436, Division 075

Proposed Effective Jan. 1, 2026

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NOTE: Substantive revisions are indicated by vertical lines in the right margin.

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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
RETROACTIVE PROGRAM**

**OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 075**

436-075-0001 Authority for Rules (*Repealed*)

Statutory authority: ORS 656.506 and 656.726
 Statutes implemented: ORS 656.506
 Hist: Filed 12/22/89 as WCD Admin. Order 6-1989, eff. 1/1/1990
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Repealed 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18

436-075-0002 Purpose (*Repealed*)

Statutory authority: ORS 656.506
 Statutes implemented: ORS 656.506
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
 Repealed 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18

436-075-0003 Applicability of Rules

(1) These rules apply to all requests for reimbursement from the Retroactive Program involving benefits payable under:

- (a) ORS 656.204 Death;
- (b) ORS 656.206 Permanent Total Disability;
- (c) ORS 656.208 Death During Permanent Total Disability; and
- (d) ORS 656.210 Temporary Total Disability for injuries before April 1, 1974.

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

Statutory authority: ORS 656.506, 656.726(4)
 Statutes implemented: ORS 656.204[OL 2017, ch. 71], 656.206 [OL 2017, ch. 70], 656.208, 656.209, 656.210, 656.236, -656.289, 656.506
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0005 Definitions

Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS chapter 656 are hereby incorporated by reference and made a part of these rules. For the purposes of these rules, unless the context requires otherwise:

- (1) **"Child"** is as defined in ORS chapter 656 applicable at the worker's date of injury.
- (2) **"Department"** means the Department of Consumer and Business Services.
- (3) **"Director"** means the director of the Department of Consumer and Business Services or the director's designee.

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(4) **"Insurer"** means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in this state, or an employer or employer group that has been certified as self-insured under ORS 656.430.

(5) **"Mailed" or "mailing date,"** unless otherwise specified, means:

- (a) The date a document is postmarked;
- (b) The date automatically produced by electronic transmission (e.g., email or facsimile);
- (c) The date a hand-delivered document is stamped or punched in by the recipient; or
- (d) The date of a phone, or in-person request, when allowed under these rules.

(6) **"Retroactive Program benefit"** means the additional amount paid to an eligible worker or beneficiary when benefit levels are lower than what is currently paid for like injuries.

(7) **"Spouse"** includes cohabitants under ORS 656.226.

(8) **"Statutory benefit"** means any benefit payable to or on behalf of the injured worker under the law in effect at the time of the worker's injury, as modified by marital and dependency status changes.

Statutory authority: ORS 656.726(4)
 Statutes implemented: ORS 656.005, 656.726(4)
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0006 Administration of Rules (*Repealed*)

Statutory authority: ORS 656.726
 Statutes implemented: ORS 656.726
 Hist: Filed 12/22/89 as WCD Admin. Order 6-1989, eff. 1/1/90
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Repealed 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18

436-075-0008 Administrative Review

(1) Any party aggrieved by a proposed order or proposed assessment of civil penalty issued under ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board under ORS 656.740. To request a hearing the party, or assigned claims agent, must:

- (a) Mail or deliver a written request for hearing to the Workers' Compensation Division within 60 days of the mailing date of the proposed order or assessment; and
- (b) Specify the reasons why the party or assigned claims agent disagrees with the proposed order or assessment in the request.

(2) Any party 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 by filing a request for hearing under OAR 436-001-0019 within 30 days of the mailing date of the order or notice of action. OAR 436-001 applies to the hearing.

Statutory authority: ORS 656.726(4)
 Statutes implemented: ORS 656.704, 656.740, 656.745, 656.750
 Hist: Amended 10/19/05 as WCD Admin. Order 05-065, eff. 1/2/06

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Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
 Statutory minor correction (repeal of ORS 656.750)—ORS 183.335(7), filed and effective 6/18/24
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0010 Criteria for Eligibility

(1) The department will issue a bulletin to notify all insurers of changes in the Retroactive Program benefit levels whenever the director determines a change is necessary under ORS 656.506(7).

(2) Eligibility for Retroactive Program benefits is based on the worker's injury date as follows:

(a) Workers or beneficiaries eligible to receive either death or permanent total disability benefits become eligible for Retroactive Program benefit increases when the benefits granted under the Retroactive Program bulletin exceed the benefits provided by the statute in effect at the time of the injury.

(b) Workers receiving temporary total disability benefits are eligible for Retroactive Program benefit increases as follows:

(A) Workers with injuries occurring before July 1, 1973 are eligible for Retroactive Program benefit increases;

(B) Workers with injuries occurring from July 1, 1973 through April 1, 1974 may be eligible for benefits according to the limits defined in the Retroactive Program bulletin; and

(C) Workers with injuries occurring on or after April 1, 1974 are not eligible to receive Retroactive Program increases to their temporary total disability benefit.

(3) A claim is not eligible for Retroactive Program benefits if all issues except compensable medical services are disposed of under ORS 656.236 or settled under ORS 656.289 before becoming eligible under section (2) of this rule.

(4) Costs for claims of subject workers of a noncomplying employer under ORS 656.052 are not eligible for reimbursement from the program, but remain a cost recoverable from the employer under ORS 656.054(2).

Statutory authority: ORS 656.506, 656.726(4)
 Statutes implemented: ORS 656.236, 656.289, 656.506
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
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 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0020 Death Benefit

(1) Death benefits must be paid to eligible beneficiaries under ORS 656.204, OAR 436-060-0075, and the benefit schedules in the Retroactive Program bulletin.

(2) The statutory death benefit for injuries occurring from July 1, 1973 through April 1, 1974 will be reduced by the Social Security benefits received by the worker's surviving spouse, not to exceed the July 1, 1973 statutory benefit level. The amount of reduction to the

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statutory benefit is a Retroactive Program benefit. The insurer may request reimbursement only for the adjusted Retroactive Program benefit.

(3) At least once every two years, the insurer must verify that all beneficiaries receiving death benefits for which the insurer may request reimbursement from the Retroactive Program are alive and remain eligible for those benefits. Insurers' questions regarding beneficiaries' status must be reasonably pertinent to the continuing eligibility of those persons for benefits.

Statutory authority: ORS 656.506, 656.726(4)
Statutes implemented: ORS 656.204 [OL 2017, ch. 71], 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0030 Permanent Total Disability Benefit

(1) Permanent total disability benefits must be paid under ORS 656.206 and the benefit schedules in the Retroactive Program bulletin.

(2) Benefits payable for a partial month must be calculated by dividing the monthly benefit by the actual number of days in the month and multiplying that result by the number of days payable.

(3) Except as specified in OAR 436-060-0075(7), Benefits for beneficiaries must be paid to the date of any status change.

(4) Any Social Security offset determined under ORS 656.209 must first be applied against the statutory portion of the permanent total disability benefit. Any amount of the Social Security offset that exceeds the statutory benefit must be applied against the Retroactive Program benefit. The insurer may request reimbursement only for that portion of the Retroactive Program benefit that has not been offset.

(5) At least once every two years, the insurer must verify that all beneficiaries receiving benefits for which the insurer may request reimbursement from the Retroactive Program are alive and remain eligible for those benefits. Such "status checks" of beneficiaries may occur at the same time the insurer re-examines the permanent total disability claim under OAR 436-030-0065(1). Insurers' questions regarding beneficiaries' status must be reasonably pertinent to the continuing eligibility of those persons for benefits.

Statutory authority: ORS 656.506, 656.726(4)
Statutes implemented: ORS 656.206 [OL 2017, ch. 70], 656.209, 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0040 Death during Permanent Total Disability

(1) If the injured worker dies during the period of permanent total disability, death benefits must be paid to eligible beneficiaries under ORS 656.208, 656.204, OAR 436-060-0075, and the benefit schedules in the Retroactive Program bulletin.

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(2) The statutory death benefit for injuries occurring from July 1, 1973 to April 1, 1974 will be reduced by the Social Security benefits received by the worker or the worker's surviving spouse, not to exceed the July 1, 1973 statutory benefit level. The amount of reduction to the statutory benefit is a Retroactive Program benefit. The insurer may request reimbursement only for the adjusted Retroactive Program benefit.

(3) At least once every two years, the insurer must verify that all beneficiaries receiving death benefits for which the insurer may request reimbursement from the Retroactive Program are alive and remain eligible for those benefits. Insurers' questions regarding beneficiaries' status must be reasonably pertinent to the continuing eligibility of those persons for benefits.

Statutory authority: ORS 656.506, 656.726(4)
Statutes implemented: ORS 656.204 [OL 2017, ch. 71], 656.208, 656.506
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0050 Temporary Total Disability

(1) Temporary total disability benefits must be paid under ORS 656.210, OAR 436-060-0150, and the benefit schedules in the Retroactive Program bulletin.

(2) The computation of benefits under these rules and the Retroactive Program bulletin may not reduce temporary total disability benefits currently being paid.

Statutory authority: ORS 656.506
Statutes implemented: ORS 656.210
Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0065 Dispositions

(1) Any disposition of the claim by the parties under ORS 656.236, or settlement of the claim under ORS 656.289, is not eligible for reimbursement from the Retroactive Program unless it is approved by the director before it is submitted to the Workers' Compensation Board.

(2) Requests for the director's approval of proposed dispositions must be made in writing, and must include:

- (a) A copy of the proposed disposition that specifies the amount of the proposed contribution to be made from the Retroactive Program;
- (b) A statement from the insurer indicating how the amount of the contribution was calculated; and
- (c) Any other information required by the director.

(3) The director will not approve the disposition if:

- (a) The ratio of the amount requested from the program to the total amount of the disposition exceeds the percentage of current benefits due the worker from the program; or
- (b) The settlement exceeds a reasonable projection of future liability.

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(4) The insurer must submit dispositions to the Workers' Compensation Division in the format prescribed by the director.

Statutory authority: ORS 656.506, 656.726(4)
 Statutes implemented: ORS 656.236, 656.289
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

436-075-0070 Reimbursement

- (1) Reimbursement from the Retroactive Program will be authorized by the Workers' Compensation Division on a quarterly basis.
- (2) Requests for reimbursement must be mailed or delivered to the Workers' Compensation Division within 30 days after the end of each calendar quarter to be processed in that quarterly disbursement.
- (3) Requests for reimbursement mailed or delivered to the Workers' Compensation Division more than 30 days after the end of the quarter will be processed with the next quarterly disbursement.
- (4) A separate request for reimbursement must be submitted for each insurer and include a signed certification that the payments reported on the request have been made in the amounts reported.
- (5) The insurer must use [Form 3285](#), "Request for Reimbursement from the Retroactive Program," or an equivalent form, to request reimbursement from the Retroactive Program.
 - (a) If an equivalent form is used, it must include all of the data elements on Form 3285; and
 - (b) Each request must accurately reflect the marital and dependency status in effect and eligible for reimbursement in the period requested.
- (6) The director will not process any request that does not meet the requirements of section (4) and (5) of this rule.
- (7) The department will recover any overpayment made to an insurer as a result of an insurer reporting error or incorrect information submitted on a quarterly request form.
- (8) If a denied claim is found to be compensable by an administrative law judge, the Workers' Compensation Board, or the Court of Appeals, and that decision is subsequently reversed by a higher level of appeal, the insurer will receive reimbursement for Retroactive Program benefit payments required to be made while the claim was in an accepted status.

Statutory authority: ORS 656.506, 656.726(4)
 Statutes implemented: ORS 656.506
 Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98
 Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16
 Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18
 See also the *Index to Rule History*: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

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436-075-0090 Third Party Recovery

- (1) In a third party recovery, previously reimbursed Retroactive Program benefits are a portion of the paying agency's lien.
- (2) When the insurer learns of third-party settlement negotiations on any claim for which it has received reimbursement from the Retroactive Program, the insurer must notify the Workers' Compensation Division.
- (3) The insurer must make remittance on recovered Retroactive Program benefits to the department in the quarter following the recovery in amounts determined under ORS 656.591 and 656.593.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.506, 656.591, 656.593

Hist: Amended 12/4/97 as WCD Admin. Order 97-062, eff. 1/1/98

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

Amended 12/14/17 as WCD Admin. Order 17-063, eff. 1/1/18

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

436-075-0100 Assessment of Civil Penalties

Under ORS 656.745 the director may assess a civil penalty against an insurer for failure to comply with these rules. Penalty orders will be issued under ORS 656.447 and 656.704 and are subject to review under OAR 436-075-0008.

Statutory authority: ORS 656.745

Statutes implemented: ORS 656.204, 656.726, 656.745 and 656.447

Hist: Amended 11/29/90 as WCD Admin. Order 23-1990, eff. 12/26/90

Amended 10/12/15 as WCD Admin. Order 15-063, eff. 1/1/16

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