

November 25, 2025

MARIE ROGERS
POLICY ANALYST/RULES COORDINATOR
WORKERS' COMPENSATION DIVISION
DEPT. OF CONSUMER & BUSINESS SERVICES
350 WINTER ST. NE
SALEM, OR 97312

Re: Written comments regarding WCD's Proposed Changes to OAR 436-030, -060, -075

Dear Ms. Rogers,

SAIF Corporation thanks the Workers' Compensation Division (WCD) for the opportunity to provide written comments related to the Proposed Changes to OAR 436-030, -060 and -075. SAIF offers the following written comments for the division's consideration.

OAR 436-030-0135

SAIF appreciates WCD clarifying when a reconsideration proceeding may or may not be conducted in response to the changes to ORS 656.230 by HB2802. However, the proposed changes would impose an additional requirement that is absent from HB2802 and the changes to ORS 656.340.

HB2802 modified ORS 656.340 to allow a worker to request a lump sum payment of a permanent partial disability (ppd) award that exceeds \$6,000 before the award is final if the worker waives their right to reconsideration of all aspects of a notice of closure. An insurer is required to pay the ppd award in a lump sum if there are no statutory bases to deny the request.

Here, the proposed rule adds an additional step. Proposed OAR 436-030-0135 states that the director will not conduct a reconsideration proceeding after a worker requests a lump sum payment of their ppd award, waives their right to request reconsideration of a notice of closure, and accepts, deposits, or cashes the payment of the ppd award. The proposed rule conflicts with the changes to ORS 656.340 by HB2802 that do not require a worker to accept, cash or deposit the payment of the ppd award to waive their right to reconsideration.¹

By inserting an additional step before the director may deny or end a reconsideration proceeding, the proposed changes exceed the statutory language. Additionally, it creates

¹ A failure to timely pay the ppd award may subject the insurer to penalties under the administrative rules or statutes such as ORS 656.262(11)(a) for the unreasonable resistance to the payment of compensation.

the opportunity for reconsideration to proceed even when the worker requested and received a lump sum payment if WCD does not receive notice the payment was "cashed, deposited, or otherwise accepted". Because this requirement exceeds the statutory language, SAIF respectfully requests that WCD remove proposed OAR 436-030-0135(4)(d) from the proposed changes to align the rule with the revisions to ORS 656.230.

OAR 436-060-0025(4)(C)

The proposed rule creates and defines a new "fluctuating pay rate" when a worker's pay rate changes on a regular basis and with no fixed rate. SAIF is concerned that this new term adds confusion when determining irregular wages and may lead to unnecessary and increased litigation to determine what qualifies as a "regular basis" or as "occasional changes" for a pay rate change.

In addition, SAIF is unaware of any issue with the current calculation of irregular wages when there are different overtime pay rates as the definition of irregular wages already contemplates variable pay rates, varying hours, and monies paid on unscheduled or unpredictable intervals. OAR 436-060-0005(19)(a). SAIF proposes the WCD issue an industry notice or bulletin to address the situation where a worker has irregular wages with varying overtime rates and advise stakeholders as to how to properly calculate the average weekly wage rather than create a new category of irregular wages.

OAR 436-060-0200

The proposed changes streamline the rules for a civil penalty by removing references to specific circumstances where a civil penalty may be assessed under current OAR 436-060-0200(3)-(6). SAIF appreciates the simplification of the proposed change but also values the circumstances identified in the current rules as it provides clear guidance regarding the types of actions that may give rise to a civil penalty. Thus, while SAIF supports the simplification of the rule, it also requests WCD issue a bulletin or industry notice that details the circumstances listed in the current rules, which would be a helpful reference for claim processors.

As always, SAIF appreciates the WCD's engagement and commitment to the rulemaking process as well as its collaborative approach. Thank you for your consideration of SAIF's comments as the division proceeds with its review of the issues raised.

Sincerely,

/s/ Elaine Schooler
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