

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

In the Matter of the Amendment of:

OAR 436-030 Claim Closure and Administration

OAR 436-060 Claims Administration

OAR 436-075 Retroactive Program

)
) SUMMARY OF
) TESTIMONY AND
) AGENCY RESPONSES

This document summarizes the significant data, views, and arguments contained in the hearing record. The purpose of this summary is to create a record of the agency's conclusions about the major issues raised. Exact copies of the written testimony are attached to this summary.

The proposed amendments to the rules were announced in the Secretary of State's *Oregon Bulletin* dated November 3, 2025. On November 19, 2025, a public rulemaking hearing was held as announced at 2 p.m. via video and telephone conference. Marie Rogers, from the Workers' Compensation Division, was the hearing officer. The record was held open for written comment through November 26, 2025.

Testimony list:

Exhibit	Testifying
1	Transcript of public rulemaking hearing of November 19, 2025 (no testimony)
2	Elaine Schooler, SAIF Corporation
3	Keith Semple, Oregon Trial Lawyers Association

Testimony: OAR 436-030-0135 *Exhibit 2*

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.

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 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.

Response:

Thank you for your testimony. The division reviewed ORS 656.230 and ORS 656.304 and agrees that the requirement that the award be cashed, deposited or otherwise accepted should be removed. However, we noted that if (4)(d) was removed entirely, a reconsideration could not go forward if the insurer requested a reconsideration. As a result, we have changed (4)(d) to instead specify a reconsideration will not proceed in scenarios where a lump sum payment is required under ORS 656.230. (No lump sum payment is required under ORS 656.230 if the insurer has requested reconsideration.)

Testimony: OAR 436-060-0025(4)(a)(C)

Exhibit 2

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.

Response:

Thank you for your testimony. The division proposed a change to address a scenario that is not addressed in the current rule. As is, the rule is unclear on how to calculate a worker’s weekly wage when the calculation in OAR 436-060-0025(4)(c)(b)(C) must be used (i.e., the “average hours method), and an hourly pay rate fluctuates due to the number of hours worked.

Additionally, if the division established a standard in a industry notice or bulletin rather than a rule, the standard would not be enforceable.

However, the division recognizes that introducing a new term (“fluctuating pay rate”) may cause confusion. In light of that, the division has removed the term and instead amended the definition of “pay rate change.” This revision provides that a pay rate change does not include fluctuations in the rate due to the number of hours worked in a period. In the circumstance where a pay rate fluctuates because of the number of hours worked, the calculation in (4)(b)(C) of the rule should not apply to those wages.

Testimony: OAR 436-060-0025(9)

Exhibit 3

OTLA disagrees with the broad exclusion of one time signing bonuses from the Average Weekly Wage calculation. Signing bonuses are used to increase a worker’s overall compensation, and entice them to accept an offer of employment. This is an especially common practice in nursing and other fields where workers are in greater demand and change positions more frequently. Signing bonuses should be treated differently than relocation payments because the former is used as a way to pay extra compensation in the first year, which is more akin to the bonus payments that are currently included.

Response:

Thank you for your testimony. Though signing bonuses do increase first year compensation, they are geared towards incentivizing accepting the job offer, and as a result are not necessarily representative of the worker’s base wage or hourly rate. Additionally, because these one time bonuses may not be a wage that is lost after the date of injury, including them in the weekly wage calculation would mean compensating the worker for wages they aren’t losing after the date of injury. The rule remains as proposed.

Testimony: OAR 436-060-0060(1)(b)(B)(iii)(I)

Exhibit 2

This provision allows the insurer to deny a request for lump sum payment if the worker’s vocational program is approved and scheduled to begin within 30 days of the decision deadline on the lump sum request.

This provision exceeds the statutory language of ORS 656.230(1)(d), which allows the insurer to deny the lump sum only when the worker is enrolled and actively engaged in training. The rule language deprives the worker of 45 days in which to exercise the right to obtain a lump sum payment of Permanent Partial Disability prior to starting vocational rehabilitation and losing access to their impairment compensation for the duration of their program. This creates additional risk for a worker who wants to appeal their closure.

There is not a good policy argument to support these additional restrictions, and they are ripe for

challenge if WCD maintains them. This provision must conform to the Statute, and should be amended.

Response:

Thank you for your testimony. This issue was not raised at the beginning of the rulemaking process and as a result, stakeholders did not discuss this issue in depth. Because the provision in (1)(b)(B)(iii)(I) was originally established in 1994 based on stakeholder feedback, we believe that any change needs to be discussed more thoroughly by stakeholders. As a result, the division has opted to not change the rule at this time. However, given the concern raised in the testimony about the statutory language, the division commits to bringing this issue forward for discussion in a future rulemaking.

Testimony: OAR 436-060-0200

Exhibit 2

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.

Response:

Thank you for your testimony. At this time, WCD does not intend to issue an industry communication about the circumstances in which a civil penalty may be issued. The rules and statutes listed in the language removed are not an exhaustive list of all claim processing or timeframe requirements. In general, claims processors should be aware that any violation of a rule or statute may result in a civil penalty under ORS 656.745(2).

Testimony: OAR 436-060-0200

Exhibit 3

The proposed revision to the rule language is unnecessary, and would provide less guidance to all involved than the current language. OTLA echoes SAIF's concerns in this regard.

Unless the language WCD labels as redundant has caused a significant problem, there is no reason to amend it on such a large scale. At best, the change will do nothing but eliminate a bit of language from a still lengthy set of rules. At worst, it could diminish guidance and enforcement at a time when we are hearing that medical providers are having major problems with response times and general compliance with the rules.

Response:

Thank you for your testimony. The language eliminated in the permanent rule does not limit WCD's ability to issue penalties under ORS 656.745(2), nor does it eliminate response or compliance standards established in OAR chapter 436 or ORS chapter 656. Consistent with WCD's commitment to streamlining the rules and removing redundancies where possible, the rule remains as proposed.

Dated this 23rd day of December, 2025

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OF THE STATE OF OREGON

PUBLIC RULEMAKING HEARING

In the Matter of the Amendment of OAR: <ul style="list-style-type: none">• 436-060, Claims Administration• 436-030, Claim Closure and Reconsideration• 436-075, Retroactive Program)))))	TRANSCRIPT OF TESTIMONY
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The proposed amendment to the rules was announced in the Secretary of State’s *Oregon Bulletin* dated November 3, 2025. On November 19, 2025, a public rulemaking hearing was held as announced at 2 p.m. via video and telephone conference. Marie Rogers, from the Workers’ Compensation Division, was the hearing officer. The record will be held open for written comment through November 26, 2025.

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TRANSCRIPT OF PROCEEDINGS

Marie Rogers:

Good afternoon and welcome. This is a public rulemaking hearing.

My name is Marie Rogers, and I’ll be the presiding officer for the hearing today.

The time is now 2:00 p.m. on Wednesday, November 19, 2025. We are conducting this hearing virtually, by video and telephone conferencing. We are making a recording of the hearing.

The Workers’ Compensation Division of the Department of Consumer and Business Services proposes to amend chapter 436 of the Oregon Administrative Rules, specifically:

- Division 060, Claims Administration
- Division 030, Claim Closure and Reconsideration and
- Division 075, Retroactive Program

The department has:

- Summarized the proposed rule changes and prepared an estimate of fiscal and economic impacts in the notice of proposed rulemaking filed with the Oregon Secretary of State;
- Published rulemaking notice to its postal and electronic mailing lists;
- Notified Oregon legislators as required by ORS chapter 183; and
- Posted public notice and the proposed rules to its website.

Transcript of public rulemaking hearing
November 19, 2025

The Oregon Secretary of State:

- Published the hearing notice in its *Oregon Bulletin* dated November 3, 2025.

This hearing gives the public the opportunity to provide comment about the proposed rules. In addition, the division will accept written comment through and including November 26, 2025, and will make no decisions until all of the testimony is considered.

You may submit testimony in any written form. I encourage you to submit your testimony by email or as attachments to email. However, you may also use US mail. The email and physical address are on the Notice of Proposed Rulemaking. I will acknowledge all testimony received.

We are ready to receive public testimony.

Is there anyone who would like to testify at this time?

Keith Semple indicated he wished to provide testimony via the Microsoft Teams hand-raising tool, but Keith's audio was not working properly. Keith indicated in the chat that he would provide written comments.

Hearing no one, in a moment I will recess the hearing, but we will resume for additional testimony if anyone wishes to testify before 2:30 p.m. today.

Again, the record remains open for written testimony through and including November 26. And that would be for emailed or mailed testimony.

This hearing is recessed at 2:04 p.m.

The hearing is resumed at 2:28 p.m.

Is there anyone who would like to testify today?

Hearing no one, the time is 2:29 p.m.

Thank you for coming. This hearing is adjourned.

Transcribed from a digital audio recording by Marie Rogers, November 25, 2025.

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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Exhibit "3"

November 26, 2025

Marie Rogers
Policy Analyst/Rules Coordinator
Workers' Compensation Division
350 Winter St. NE
Salem, Oregon 97312

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

Dear Ms. Rogers:

OTLA 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.

OTLA offers the following written comments for the Division's consideration.

OAR 436-060-0025(9)

OTLA disagrees with the broad exclusion of one time signing bonuses from the Average Weekly Wage calculation. Signing bonuses are used to increase a worker's overall compensation, and entice them to accept an offer of employment. This is an especially common practice in nursing and other fields where workers are in greater demand and change positions more frequently. Signing bonuses should be treated differently than relocation payments because the former is used as a way to pay extra compensation in the first year, which is more akin to the bonus payments that are currently included.

OAR 436-060-0060(1)(b)(B)(iii)(I)

This provision allows the insurer to deny a request for lump sum payment if the worker's vocational program is approved and scheduled to begin within 30 days of the decision deadline on the lump sum request.

This provision exceeds the statutory language of ORS 656.230(1)(d), which allows the insurer to deny the lump sum only when the worker is enrolled and actively engaged in training. The rule language deprives the worker of 45 days in which to exercise the right to obtain a lump sum payment of Permanent Partial Disability prior to starting vocational rehabilitation and losing access to their impairment compensation for the duration of their program. This creates additional risk for a worker who wants to appeal their closure.



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OAR 436-060-0200

The proposed revision to the rule language is unnecessary, and would provide less guidance to all involved than the current language. OTLA echoes SAIF's concerns in this regard.

Unless the language WCD labels as redundant has caused a significant problem, there is no reason to amend it on such a large scale. At best, the change will do nothing but eliminate a bit of language from a still lengthy set of rules. At worst, it could diminish guidance and enforcement at a time when we are hearing that medical providers are having major problems with response times and general compliance with the rules.

Thank you for considering our comments.

Sincerely,

Keith Semple

ksemple@justicelawyers.com