

OFFICE OF THE SECRETARY OF STATE

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AND TRIBAL LIAISON



ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 436
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

FILED

03/28/2024 10:55 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Vocational assistance eligibility, vocational benefits clarifications and updates.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/02/2024 11:55 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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350 Winter Street
Salem, OR 97301

Filed By:
Amy Hilgemann
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/25/2024

TIME: 9:00 AM - 10:00 AM

OFFICER: Rules Coordinator

IN-PERSON HEARING DETAILS

ADDRESS: Room F, Labor & Industries Building, 350 Winter St. NE, Salem, OR 97301

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-503-446-4951

CONFERENCE ID: 27767152251

SPECIAL INSTRUCTIONS:

Passcode: zV3jaK

NEED FOR THE RULE(S)

Rule amendments are needed to better align the rules with governing statutes, expand eligibility for vocational assistance, ensure certain benefit amounts are appropriate, and enhance clarity.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Rulemaking advisory committee records, and written advice. These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Please contact Daneka Karma, policy manager, 503-509-6785, WCD.Policy@dcbs.oregon.gov.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Workers' Compensation Division does not collect data about race or ethnicity related to workplace injuries and illness in Oregon, but the United States Bureau of Labor Statistics publishes lists of occupations and numbers of Americans employed broken down by race. Black/African Americans and Hispanic/Latino workers are represented in some of the more dangerous occupations in higher numbers than their respective shares of the U.S. workforce. To the extent Oregon workers in these racial groups suffer more on-the-job injuries and illnesses, increased or decreased workers' compensation benefits may impact these racial groups more than others.

The revisions to OAR 436-120-0145 and 0175, along with the addition of proposed new OAR 436-120-0511, expands eligibility for vocational assistance to include workers who are not authorized to work in the United States. These revisions may have greater positive impact on Hispanic or Latino workers. Estimates by the United States Department of Homeland Security, Pew Research Center, and the Migration Policy Institute indicate that Mexico is the most common country of origin for unauthorized immigrants in the United States and Oregon.

FISCAL AND ECONOMIC IMPACT:

The agency projects the proposed rule amendments, if adopted, will not affect the agency's cost to carry out its responsibilities under ORS chapter 656 and OAR chapter 436. Possible impacts on stakeholders are included under "Statement of cost of compliance" below.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

a. The agency estimates that proposed rule changes will not increase or decrease costs to state agencies for compliance with the rules.

b. The agency estimates that proposed rule changes will not increase or decrease costs to units of local government for compliance with the rules, with the exception of self-insured cities and counties, which are addressed under part c. below.

c. The agency estimates that proposed rule changes will increase costs to the public for compliance with the rules.

- The proposed changes to OAR 436-120-0145, 0175, 0177, and proposed new rule OAR 436-120-0511 will increase costs to the public. Insurers and self-insured employers will incur increased costs because eligibility for vocational assistance would be expanded to include workers not authorized to work in the United States. It is estimated there will be an increase in costs for:

- Vocational assistance (\$226,000 - \$679,000 annually)

- Temporary disability paid during a training plan (\$267,000 - \$800,000 annually)

Notes on estimated costs:

- The estimates are based on a range of 10 to 30 workers per year who were found ineligible for vocational assistance due to not being authorized to work in the United States.

- Vocational assistance costs were based on the average vocational assistance costs for workers on training plans from 2020-2022, approximately \$22,618 per worker.

- Temporary disability was based on two-thirds of the state average weekly wage effective on July 1, 2023 (\$1,295.86) and the average number of weeks that temporary disability was paid for workers on training plans in 2022 (about 31 weeks).

- Under the Immigration Reform and Control Act of 1986 (IRCA), it is unlawful to recruit, hire, employ, or refer for employment a person known to be not authorized to work in the United States. Some vocational training benefits, such

as job placement services and on-the-job training may conflict with the IRCA. Under these proposed rule changes, workers who are not authorized to work in the United States may only receive limited training, which would exclude on-the-job training and job placement services. The above estimates are based on the assumption that all workers will have access to all vocational benefits. Thus, the actual additional costs to provide vocational assistance to workers who are not authorized to work in the United States may be lower than these estimates.

Source: Information Technology and Research Section, Department of Consumer and Business Services

- Insurers and self-insured employers may incur some costs to revise letters and associated computer programs and templates to implement the revisions to mandatory notice language in OAR 436-060-0018, 0020, 0030, 0095, 0105, 0135, 0137. However, the agency cannot estimate the exact amount of the costs to insurers to make these adjustments.

- The proposed changes to OAR 436-120-0720 expand the number of workers who are eligible for a living expense allowance during a vocational evaluation. As a result, insurers may be required to pay an allowance for more workers than under the current rule. However, the agency cannot estimate the number of workers who may be eligible for a living expense allowance.

- The maximum spending limits for overall vocational assistance established in OAR 436-120-0720, includes direct worker purchases, remains unchanged. However, the proposed changes to OAR 436-120-0720 increase the maximum amount an insurer could pay for certain direct worker purchases (second residence allowance, vehicle rental or lease, and other purchases). Higher amounts could be paid for these direct worker purchases than allowed under the current rule. This could potentially increase the costs of vocational assistance for insurers. The agency does not have data available to estimate how often insurers will be required to pay higher amounts for these direct worker purchases.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The businesses affected by the proposed rule amendments are primarily insurers and self-insured employers. However, insurers and self-insured employers tend to be large employers and not small businesses as defined in ORS 183.310. Vocational assistance providers that provide vocational assistance are subject to proposed rule changes. Approximately 33 registered vocational providers assist workers in returning to work, and it is estimated that more than 80 percent of these providers are small businesses. Similarly, businesses that provide training to workers may be affected; and these businesses vary in size and may include small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed rules expand the number of workers who may be eligible for vocational assistance, and make changes to rule requirements that vocational assistance providers will need to apply as necessary to individual cases. Vocational assistance providers and training facilities may experience increased reporting and administrative activities for the additional workers that may become eligible under the proposed rules. However, insurers will pay these businesses for their services.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed rules expand the number of workers who may be eligible for vocational assistance, and make changes to rule requirements that vocational counselors will need to apply as necessary to individual cases. Vocational assistance providers and training facilities may use additional equipment, supplies, labor, and provide increased administration required for compliance. However, insurers will pay these businesses for their services.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The agency sent rule advisory committee invitations to more than 4,500 stakeholders, including representatives of small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

436-120-0003, 436-120-0005, 436-120-0008, 436-120-0009, 436-120-0012, 436-120-0115, 436-120-0117, 436-120-0145, 436-120-0147, 436-120-0165, 436-120-0175, 436-120-0177, 436-120-0185, 436-120-0410, 436-120-0443, 436-120-0445, 436-120-0511, 436-120-0710, 436-120-0720, 436-120-0820, 436-120-0840

AMEND: 436-120-0003

RULE SUMMARY: Revises the title of the rule from "General Provisions," to "Purpose and Applicability of These Rules" Revises for clarity the applicability of the rules to OAR 436-120, and separates current provisions into subsections. Removes provision regarding applicability of the rules to eligibility decisions involving the weekly wage Removes sections (4) and (5), "Submitting documents or information, calculating time" and "Availability of forms." Revises language, and moves to proposed rule 0009.

CHANGES TO RULE:

436-120-0003

General Provisions Purpose and Applicability of These Rules ¶

(1) Purpose of these rules.¶

The purpose of the rules in OAR 436-120 is to:¶

(a) Prescribe uniform standards for determining eligibility, delivery, and payment for vocational services to injured workers;¶

(b) Prescribe procedures for resolving disputes; and¶

(c) Establish standards for the certification of counselors and providers.¶

(2) Applicability of rules.¶

(a) These rules in OAR 436-120 govern vocational assistance under the workers' compensation law on or after the effective date of these rules ~~except as OAR 436-120 otherwise provides.~~¶

~~(b) Except as outlined below, t.~~¶

(b) The director's decisions under OAR 436-120-0008 regarding eligibility will be based on the rules in effect on the date the insurer issued the notice. If an eligibility decision involves the weekly wage under OAR 436-120-0147(3)(b)(B), the director's decisions under OAR 436-120-0008 regarding eligibility will rely on OAR 436-120-0147(3)(b)(B) in effect on the date of the director's order.¶

(c) The director's decisions regarding the nature and extent of assistance will be based on the rules in effect at the time the assistance was provided.¶

(d) If the director orders future assistance, such assistance must be provided in accordance with the rules in effect at the time assistance is provided.¶

(e) Under these rules in OAR 436-120 a claim for aggravation or reopening a claim to process a newly accepted condition is considered a new claim for purposes of vocational assistance eligibility and vocational assistance, except as otherwise provided in these rules.¶

(3) Director's discretion. ¶

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

(b) If the worker has returned to work with the employer at injury, the director reserves the right to verify whether the employment is suitable.¶

~~(4) Submitting documents or information, calculating time.~~¶

~~(a) Documents or information required under these rules to be submitted to the division may be submitted in any of the following ways:~~¶

~~(A) Mailed to the division's mailing address with sufficient postage and placed in the custody of the U.S. Postal Service;~~¶

~~(B) Physical delivery to the division's Salem office;~~¶

~~(C) Faxed, if the document transmitted indicates it has been delivered by fax, is sent to the correct fax number, and indicates the date it was sent; or~~¶

~~(D) Any other method authorized by the director.~~¶

~~(b) Timeliness of any document required by these rules to be submitted to the division is determined as follows:~~¶

~~(A) If a document is mailed, it will be considered submitted on the date it is postmarked.~~¶

~~(B) If a document is faxed, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date.~~¶

~~(C) If a document is delivered, it must be delivered during regular business hours and marked as received to be considered submitted on that date.~~¶

~~(c) Time periods allowed under these rules are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.~~

~~(5) Availability of forms.~~

The forms and bulletins referenced in these rules are available on the division's website at wcd.oregon.gov.

Statutory/Other Authority: ORS 656.340(9), 656.726(4)

Statutes/Other Implemented: ORS 656.206, 656.340

AMEND: 436-120-0005

RULE SUMMARY: Adopts by reference certain definitions under ORS chapter 656

Revises the definition of "Director" to include "the director's designee"

Revises the definition of "Training" to refer to an "authorized training plan" instead of "approved training plan"

Revises the definitions of "Division" and "Cost-of-living matrix" to state "means" instead of "refers to"

CHANGES TO RULE:

436-120-0005

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 purpose of these rules, unless the context requires otherwise:¶¶

- (1) "Cost-of-living matrix" ~~is~~means the a chart issued annually by the division in Bulletin 124 that publishes the conversion factors, effective July 1 of each year, used to adjust for changes in the cost-of-living rate from the date of injury to the date of calculation. The conversion factor is based on the annual percentage increase or decrease in the average weekly wage, as defined in ORS 656.211.¶¶
- (2) "Counselor" means the vocational assistance counselor certified under these rules to provide vocational assistance to injured workers and activities for determining a worker's eligibility for vocational assistance.¶¶
- (3) "Director" means the director of the Department of Consumer and Business Services, or the director's ~~delegate for the matters~~signee.¶¶
- (4) "Division" ~~refer~~means to the Workers' Compensation Division of the Department of Consumer and Business Services.¶¶
- (5) "Employer at injury" means the organization that employed the worker when the worker sustained the injury or occupational disease.¶¶
- (6) "Insurer" means the insurance company or self-insured employer responsible for the workers' compensation claim.¶¶
- (7) "Provider" means the vocational assistance provider that is an insurer or other public or private organization registered under these rules to provide vocational assistance to injured workers and activities for determining a worker's eligibility for vocational assistance.¶¶
- (8) "Reasonable cause" may include, but is not limited to, a medically documented limitation in atthe worker's activities due to illness or medical condition of the worker or the worker's family, financial hardship, incarceration for less than six months, or circumstances beyond the reasonable control of the worker. "Reasonable cause" for failure to provide information or participate in activities related to vocational assistance will be determined based upon individual circumstances of the case.¶¶
- (9) "Reasonable labor market" for an occupation means it can be said to have reasonable employment opportunities if competitively qualified workers can expect to find equivalent jobs in the occupation within a reasonable period of time. A reasonable period of time, for workers in the majority of occupations, would be the six months that they could collect regular unemployment insurance benefits, if they were entitled to them.¶¶
- (10) "Regular employment" means the employment the worker held at the time of the injury or at the time of the claim for aggravation, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of aggravation, the employment the worker held on the last day of work before the aggravation claim. If the basis for potential eligibility is a reopening to process a newly accepted condition, "regular employment" is the employment the worker held at the time of the injury. When the condition arose after claim closure, "regular employment" is determined as if it were an aggravation claim.¶¶
- (11) "Substantial handicap to employment" means the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills, and abilities to be employed in suitable employment.¶¶
 - (a) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training, and experience.¶¶
 - (b) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.¶¶
 - (c) "Abilities" means the cognitive, psychological, and physical capability to apply the worker's knowledge and skills.¶¶
- (12)(a) "Suitable employment" or "suitable job" means employment or a job:¶¶
 - (A) For which the worker has the necessary physical capacities, knowledge, skills, and abilities;¶¶
 - (B) Located where the worker customarily worked, or within reasonable commuting distance of the worker's residence. A reasonable commuting distance is no more than 50 miles one-way modified by other factors including, but not limited to:¶¶

- (i) Wage of the job;¶
 - (ii) The pre-injury commute;¶
 - (iii) The worker's physical capacities, if they restrict the worker's ability to sit or drive for 50 miles;¶
 - (iv) Commuting practices of other workers who live in the same geographic area; and¶
 - (v) The distance from the worker's residence to the nearest cities or towns that offer employment opportunities;¶
 - (C) That pays a suitable wage or would average on a year-round basis a suitable wage;¶
 - (D) That is permanent. Temporary work is suitable if the worker's job at injury was temporary and the worker has transferable skills to earn, on a year-round basis, a suitable wage; and¶
 - (E) For which a reasonable labor market as described under OAR 436-120-0157 is documented to exist.¶
 - (b) "Suitable employment" or "suitable job" may also be modified or new employment resulting from an employer at injury activated use of the Preferred Worker Program under OAR 436-110, as described in OAR 436-120-0165(1)(c).¶
 - (13) "Suitable wage" means:¶
 - (a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage; or.¶
 - (b) For the purpose of providing or ending vocational assistance, a wage as close as possible to 100 percent of the adjusted weekly wage. This wage may be considered suitable if less than 80 percent of the adjusted weekly wage, if the wage is as close as possible to the adjusted weekly wage.¶
 - (14) "Training" means a vocational rehabilitation service provided to a worker who is enrolled and actively engaged in an ~~approved~~ authorized training plan as documented on Form 1081, "Training Plan."¶
 - (15) "Transferable skills" means the knowledge and skills demonstrated in past training or employment that make ~~at~~ the worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.¶
 - (16) "Vocational assistance" means any of the services, goods, allowances, and temporary disability compensation under these rules to assist an eligible worker return to work. This does not include activities for determining a worker's eligibility for vocational assistance.
- Statutory/Other Authority: ORS 656.340(9), 656.726(4)
Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0008

RULE SUMMARY: Revises "Hearings Division" to "Workers' Compensation Board"

Revises for clarity a request for reconsideration must be "submitted to" the division.

Revises and moves language regarding letters of agreement from section (1) to a new section (6), and clarifies the process for resolving a dispute if a letter of agreement is not honored.

CHANGES TO RULE:

436-120-0008

Administrative Review and Hearings ¶

(1) Administrative review.¶

(a) A worker wanting review of any vocational eligibility evaluation or vocational assistance matter must request administrative review by the director.¶

(b) Under ORS 656.340(11) and OAR 436-120-0185 when the worker and insurer are unable to agree on a counselor, the insurer must request administrative review by the director.¶

(c) Effective vocational assistance is best realized in a nonadversarial environment. The first objective of administrative review is to bring the parties to resolution through alternative dispute resolution procedures, including mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director will close the record and issue a director's review and order.¶

(d) The worker's request for review must be submitted to the division no later than the 60th day after the date the worker received written notice of the insurer's action.¶

(e) Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.¶

(f) The worker, insurer, employer at injury, and provider must supply needed information, attend conferences and meetings, and participate in the administrative review process as required by the director.¶

(A) Upon the director's request, any party to the dispute must provide available information within 14 days of the request.¶

(B) The insurer must promptly schedule, pay for, and submit to the division any medical or vocational tests, consultations, or reports required by the director.¶

(C) The worker, insurer, employer at injury, or provider must simultaneously provide copies of material to the other parties to the dispute when submitting material to the division.¶

(D) Failure to comply with this subsection may result in the director dismissing the administrative review or deciding the issue on the basis of available information when the worker, insurer, provider, or employer at injury fails to comply without reasonable cause.¶

(g) The director may issue a letter of agreement ~~when the parties resolve a dispute within the scope~~ under section (6) of these rules.¶

~~(A) Any agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney.¶~~

~~(B) The agreement will become effective on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise.¶~~

~~(C) The director may revise a letter of agreement~~ when the parties resolve a dispute within the scope of OAR 436-120.¶

(h) The parties have 60 days from the date the director's review and order is issued to request a hearing under OAR 436-001-0019.¶

(i) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law.¶

(j) A party may request reconsideration of a director's review and order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence that could not reasonably have been discovered and produced during the review.¶

(A) The director may grant or deny a request for reconsideration at the director's sole discretion.¶

(B) A request for reconsideration must be ~~received~~ submitted by to the division before the director's review and order becomes final or, if appealed, before the proposed and final order is issued.¶

(C) The parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.¶

(D) Parties must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.¶

(E) A request for reconsideration does not stay the 60-day time period within which the parties may request a hearing.¶

(2) Attorney fees. Attorney fees will be awarded as provided in ORS 656.385(1) and OAR 436-001-0400 to 436-001-0440.¶

(3) Hearings before an administrative law judge.¶

(a) Under ORS 656.340(16) and 656.704(2), any party that disagrees with an order issued under subsection (1)(c) of this rule or a dismissal may request a hearing as provided in OAR 436-001-0019 within 60 days of the mailing date of the order.¶

(b) Under ORS 656.704(2), any party that disagrees with an order of dismissal based on lack of jurisdiction or denial of reimbursement for vocational assistance costs may request a hearing as provided in OAR 436-001-0019 within 30 days after the party received the dismissal or written denial.¶

(c) Under ORS 656.704(2), an insurer sanctioned under OAR 436-120-0900, a provider or counselor sanctioned under ORS 656.340(9) and OAR 436-120-0915, a provider denied registration under ORS 656.340(9)(a) and OAR 436-120-0800, or an individual denied certification under ORS 656.340(9)(a) and OAR 436-120-0810, may request a hearing as provided in OAR 436-001-0019 no later than 60 days after the party received notification of the action.¶

(4) Contested case hearings of civil penalties. Under ORS 656.740 an insurer or an employer may appeal a proposed order or proposed assessment of civil penalty issued under ORS 656.745 and OAR 436-120-0900 as follows:¶

(a) The insurer or employer must submit the request for hearing in writing to the division. The request must specify the grounds upon which the proposed order or assessment is contested.¶

(b) The party must submit the request to the division within 60 days after the mailing date of the notice of the proposed order or assessment.¶

(c) The division will forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.¶

(d) The ~~Hearings Division~~ Workers' Compensation Board will conduct the hearing under ORS 656.740 and ORS chapter 183.¶

(5) Director's order. At any time, the director may order the insurer to determine eligibility or provide specified vocational assistance to achieve compliance with ORS chapter 656 and these rules. The order may be appealed as provided by statute and these rules.¶

(6) Letter of agreement.¶

(a) A dispute regarding vocational assistance may be resolved by agreement between the parties to the dispute. The agreement must be in writing and approved by the director. ¶

(b) A letter of agreement will become effective on the 10th day after the date the director issues the letter of agreement, unless the agreement specifies otherwise. Once the agreement is effective, the director may revise the agreement or reinstate administrative review only under one or more of the following conditions: ¶

(A) A party fails to honor the agreement; ¶

(B) The agreement was based on misrepresentation; ¶

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or ¶

(D) All parties request revision or reinstatement of the dispute. ¶

(c) A letter of agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney. ¶

¶

[ED. NOTE: Matrix referenced are available from the agency.]

Statutory/Other Authority: ORS 656.704(2), 656.726(4)

Statutes/Other Implemented: ORS 656.704, 656.340, 656.447, 656.740, 656.745

ADOPT: 436-120-0009

RULE SUMMARY: Creates a rule specific to submitting documents or information, calculating time, and availability of forms, which includes revised language moved from rule 0005.

Specifies when a document is considered received, if submitted electronically.

CHANGES TO RULE:

436-120-0009

Submitting Documents or Information, Calculating Time, Availability of Forms

(1) Submitting documents or information, calculating time.

(a) Documents or information required under these rules to be submitted to the division may be:

(A) Mailed to the following address:

Workers' Compensation Division

Employment Services Team

350 Winter Street NE

PO Box 14480

Salem, OR 97309-0405;

(B) Physically delivered to the division's Salem office;

(C) Faxed; or

(D) Submitted by any other method authorized by the director.

(b) Timeliness of any document or information required by these rules to be submitted to the division is determined as follows:

(A) If a document is mailed, it will be considered submitted on the date it is postmarked.

(B) If a document is delivered, it must be delivered during regular business hours and marked by the division as received to be considered submitted on that date.

(C) If a document is faxed, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date. Requests submitted by fax are considered submitted as of the date printed on the banner automatically produced by the transmitting fax machine.

(D) If a document is submitted electronically, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date. The date and time of receipt for electronic submissions is determined under ORS 84.043.

(c) Time periods under these rules are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

(2) Availability of forms.

The forms and bulletins referenced in these rules are available on the division's website at wcd.oregon.gov.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0012

RULE SUMMARY: Revises language and formatting of a notice of worker appeal rights, effective Oct. 1, 2024.

CHANGES TO RULE:

436-120-0012

General Requirements For Notices and Warnings ¶¶

(1) Insurer or provider may issue. The insurer is responsible for mailing all notices and warnings required by these rules but may delegate that responsibility to the provider that is providing vocational assistance to the worker. ¶¶

(2) Required content. All notices and warnings to the worker issued under these rules must: ¶¶

(a) Use the applicable heading. If a notice is used for more than one purpose, it must include all the headings that apply; ¶¶

(b) Be in writing, signed, and dated; ¶¶

(c) State the basis for the decision; ¶¶

(d) Include the effective date of each action in the heading; ¶¶

(e) Cite the relevant rules; ¶¶

(f) Include the telephone number of the Ombuds Office for Oregon Workers: 1-800-927-1271; and ¶¶

(g) Include the worker's appeal rights. All notices and warnings except those notifying a worker of entitlement to training or deferral of vocational assistance eligibility must contain the worker's appeal rights-; ¶¶

(A) In bold typeext, as follows: ¶¶

"If you disagree with this decision, you should contact [insert the person's name and the insurer name] within five days of receiving this letter to discuss your concerns. If you are still dissatisfied, you must contact the Workers' Compensation Division within 60 days of receiving this letter or you will lose your right to appeal this decision. A consultant with the division can talk with you about the disagreement and, if necessary, will review your appeal. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 1-800-452-0288."; and ¶¶

~~(g) Include the telephone number of the Ombuds Office for Oregon Workers: 1-800-927-1271.~~ ¶¶

(B) Effective no later than Oct. 1, 2024, the text in (g)(A) of this section must be replaced with the following language in bold and formatted as follows: ¶¶

If you disagree with this decision, you should contact [Claims examiner's name and the insurer name] within five days of receiving this letter to discuss your concerns. ¶¶

If you are still dissatisfied: ¶¶

Contact the Workers' Compensation Division within 60 days of receiving this letter. After 60 days you will lose your right to appeal this decision. ¶¶

A consultant with the division can talk with you about the disagreement and review your appeal, if necessary. ¶¶

To contact the division: ¶¶

Workers' Compensation Division ¶¶

Employment Services Team ¶¶

350 Winter Street NE ¶¶

PO Box 14480 ¶¶

Salem OR 97309-0405 ¶¶

800-452-0288 (toll free) ¶¶

¶¶

(3) Mailing and copies. All notices and warnings must: ¶¶

(a) Be mailed to the worker's last known address by both regular and certified mail; and ¶¶

(b) Be copied to the division and worker's attorney, if any, at the same time the notice or warning is mailed to the worker. ¶¶

(4) Effective date. A notice is not effective until it is sent to all required parties including the worker's attorney. ¶¶

(5) Requirements for warning letters. ¶¶

(a) A warning letter can be issued at any time during the vocational eligibility evaluation or vocational assistance process. ¶¶

(b) Warning letters do not require specific language in the headings but must include a heading clearly indicating the purpose of the warning. ¶¶

(c) A warning letter must state what the worker must do, and by when, to avoid ineligibility or the ending of eligibility or training.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0115

RULE SUMMARY: Revises language and formatting of a notice of an extended eligibility evaluation, and results of an eligibility evaluation, effective Oct. 1, 2024.

Revises a reference from "provider" to "counselor"

Revises for clarity that a notice of eligibility must include the category of vocational assistance and the reason for the selection.

CHANGES TO RULE:

436-120-0115

Vocational Eligibility Evaluation ¶

(1) Purpose of eligibility evaluation. An eligibility evaluation is done to determine whether the worker is or is not eligible for vocational assistance.¶

(2) When an eligibility evaluation is not required. An eligibility evaluation is not required if:¶

(a) The worker's claim is reopened under Own Motion under ORS 656.278;¶

(b) The worker is receiving permanent total disability benefits; or¶

(c) The worker is deceased.¶

(3) When an eligibility evaluation is required. Except as provided in OAR 436-120-0117, the insurer is required to begin an eligibility evaluation for workers with accepted disabling claims within five days of any of the following conditions:¶

(a) The insurer receives information such as medical or investigative reports that indicate, before the worker is medically stationary, the worker is likely eligible for vocational assistance;¶

(b) The worker is medically stationary, is not currently receiving vocational assistance, and:¶

(A) Has not returned to or been released to regular employment; or¶

(B) Has not returned to other suitable employment with the employer at the time of injury or aggravation; or¶

(c) Eligibility was previously determined under the current opening of the claim and the insurer has accepted a new condition.¶

(4) Services may be provided at any time. Nothing in these rules prevents an insurer from finding a worker eligible and providing vocational assistance at any time.¶

(5) Worker request for vocational assistance. If the insurer receives a request for vocational assistance from the worker and the insurer is not required to do an eligibility evaluation, the insurer may not deny eligibility for assistance, but must notify the worker in writing within 14 days of the request of:¶

(a) The reasons an eligibility evaluation is not required;¶

(b) The circumstances that require an eligibility evaluation; and¶

(c) Instructions to contact the division with questions about vocational assistance eligibility requirements and procedures.¶

(6) The eligibility evaluation process.¶

(a) The eligibility evaluation must be done by a counselor.¶

(b) At the insurer's request, the worker must provide vocationally relevant information needed to determine eligibility within a reasonable time set by the insurer.¶

(c) The insurer must provide the counselor with all relevant vocational and medical information.¶

(d) The eligibility evaluation process, including notifying the worker of the results under section (9) of this rule, must be completed within 30 days of when the process began under section (3) of this rule, unless extended under section (7) of this rule.¶

(e) Either the insurer or the counselor may notify the worker of the results of the eligibility evaluation under section (9) of this rule.¶

(7) Extension of time.¶

(a) The counselor may extend the time frame in section (6) of this rule for completing the eligibility evaluation if the counselor is unable to obtain needed information from the worker, employer, or medical provider.¶

(b) An extension of time may be for no more than 30 days.¶

(c) The counselor must notify the worker of the extension under section (8) of this rule, and submit a copy of the letter to the division.¶

(8) Notice of extension of time. The letter informing the worker that the time frame for completing the eligibility evaluation process has been extended must:¶

(a) Clearly indicate the purpose of the letter;¶

(b) Explain the reason for the extension of time;¶

(c) Explain what information is necessary to complete the eligibility evaluation process;¶

- (d) State when the eligibility evaluation process is expected to be completed;
- (e) Be mailed to the worker within five days of the date the counselor determines an extension is needed under subsection (7)(a) of this rule; and
- (f) Include the following language:

(A) In bold type:

"If you have questions about the vocational assistance process, contact [use appropriate reference to the insurer]. If you still have questions contact the Workers' Compensation Division's toll free number 1-800-452-0288."

(B) Effective no later than Oct. 1, 2024, the text listed under (f)(A) of this section must be replaced with the following language in bold and formatted as follows:

If you have questions about vocational assistance, contact:

[Insurer name]

[Insurer contact person]

[Insurer address]

[Insurer phone number]

If you still have questions, call the Workers' Compensation Division 800-452-0288 (toll free)

(9) Results of the eligibility evaluation. The results of the eligibility evaluation must be mailed to the worker following the requirements for the appropriate notice under subsection (a) or (b) of this section.

(a) The Notice of Eligibility FOR VOCATIONAL ASSISTANCE must:

(A) Include the worker's responsibilities, as specified in OAR 436-120-0197(2) and 436-120-0520(1);

(B) Include the following statement:

(i) In bold type:

"You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-work plan within 90 days of determining you are entitled to a training plan, or within 45 days of determining you are entitled to a direct employment plan. The purpose of the conference will be to identify and remove all obstacles to return-to-work plan completion and approval. The insurer, the worker, the counselor, and any other parties involved in the return-to-work process must attend the conference. The insurer or the worker may request a conference with the division if other delays in the vocational assistance process occur. Your request for this conference should be directed to the Employment Services Team of the Workers' Compensation Division. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 1-800-452-0288."

(ii) Effective no later than Oct. 1, 2024, the text in (B)(i) of this subsection must be replaced with the following language in bold and formatted as follows:

You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-work plan:

- Within 90 days of determining you are entitled to a training plan, or

- Within 45 days of determining you are entitled to a direct employment plan.

Conference purpose: Identify and remove obstacles to return-to-work plan completion and approval.

Conference attendance: The insurer, the worker, the counselor, and others involved in the return-to-work process must attend.

Other conferences: The insurer or the worker may request a conference with the Workers' Compensation Division about other delays in vocational assistance.

To request a conference, write or call:

Workers' Compensation Division

Employment Services Team

PO Box 14480

Salem OR 97309-0405

800-452-0288 (toll free)

(C) Explain that the worker and the insurer must agree on the selection of a counselor, and:

(i) Provide instructions for the worker to access the list of ~~provide~~counselors on the division's website (wcd.oregon.gov/rtw/Pages/voc-assistance.aspx);

(ii) Include a phone number for the worker to call to request a paper copy of the list; and

(iii) Include the following language:

(l) In bold type:

"If you have questions about the vocational counselor selection process, contact [use appropriate reference to the insurer]. If you still have questions, call the Workers' Compensation Division at 1-800-452-0288."

(ll) Effective no later than Oct. 1, 2024, the text in (iii)(l) of this paragraph must be replaced with the following language in bold and formatted as follows:

If you have questions about the process for selecting a vocational counselor, contact: ¶

[Insurer name] ¶

[Insurer contact person] ¶

[Insurer address] ¶

[Insurer phone number] ¶

If you still have questions, call: Workers' Compensation Division 800-452-0288 (toll free) ¶

¶

(D) Include information about the Preferred Worker Program; ¶

(E) Explain what the worker can do if the worker disagrees with something the insurer does; ~~and~~ ¶

(F) Explain direct employment services and state the worker is not entitled to training, if the worker is entitled to direct employment services but not training, ~~and~~ ¶

(G) Include the category of vocational assistance and the reason for the selection as described in OAR 436-120-0177(2). ¶

(b) The NOTICE OF INELIGIBILITY FOR VOCATIONAL ASSISTANCE must include: ¶

(A) Information about services that may be available at no cost from the Oregon Employment Department or the Office of Vocational Rehabilitation Services; ¶

(B) A brief description of the Preferred Worker Program benefits and contact information. The information can be part of the notice or a separate document attached to the notice; and ¶

(C) A list of suitable occupations the worker can perform without being retrained, if the notice is based on a finding that the worker does not have a substantial handicap to employment. ¶

(10) Multiple claims. Vocational assistance may only be provided for one claim at a time. If the worker is eligible for vocational assistance under two or more claims, the claim for the injury with the most severe vocational impact is the claim that gave rise to the need for vocational assistance. The parties may agree to provide services for more than one claim at a time, and extend time and fee limits beyond those allowable in these rules.

Statutory/Other Authority: ORS 656.340, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0117

RULE SUMMARY: Revises language and formatting of a notice regarding deferral, effective Oct. 1, 2024.

CHANGES TO RULE:

436-120-0117

Deferral of Eligibility Evaluation ¶

(1) Deferral of eligibility evaluation. The eligibility evaluation may be deferred when all of the following circumstances exist:¶

(a) The employer at injury has activated Preferred Worker Program benefits under OAR 436-110;¶

(b) The employer has made a written job offer to the worker that includes the following information:¶

(A) The start date;¶

(B) Wage and hours;¶

(C) Job site location;¶

(D) Description of job duties that includes physical requirements; and¶

(E) A statement that the job does not begin until any modifications are in place;¶

(c) The worker has agreed in writing to accept the new or modified job; and¶

(d) If the new or modified job needs worksite modifications to enable the worker to perform the job duties within the worker's injury-caused limitations:¶

(A) The modifications are in progress but not yet complete and the worker is working in a temporary modified position with the employer at injury that accommodates the worker's restrictions; or¶

(B) The worksite modifications are in place and the worker is working in and receiving payment for the new or modified job.¶

(2) Notice of deferral.¶

(a) When the eligibility evaluation process is deferred under this rule, the insurer must mail the worker a NOTICE OF DEFERRAL OF VOCATIONAL ASSISTANCE ELIGIBILITY EVALUATION.¶

(b) The notice must be mailed within five days of the date the conditions in section (1) exist.¶

(c) The notice must:¶

(A) Inform the worker that the eligibility evaluation has been deferred because the employer at injury has activated preferred worker benefits;¶

(B) Inform the worker that, if the job with the employer at injury does not begin on the date stated in the job offer letter, the worker can ask the insurer to resume the eligibility evaluation process; and¶

(C) Include the following language-i:¶

(i) In bold typeext:¶

"If you have questions about the deferral of the process for determining your eligibility for vocational assistance, contact [use appropriate reference to the insurer]. If you still have questions contact the Workers' Compensation Division's toll free number 1-800-452-0288."¶

(ii) Effective no later than Oct. 1, 2024, the text in (C)(i) of this subsection must be replaced with the following language in bold and formatted as follows:¶

If you have questions about this deferral, contact: ¶

[Insurer name] ¶

[Insurer contact person] ¶

[Insurer address] ¶

[Insurer phone number] ¶

If you still have questions, call: Workers' Compensation Division 800-452-0288 (toll free)¶

¶

(3) Resumption of eligibility evaluation process. If the eligibility evaluation has been deferred under this rule, the insurer must resume the process within 14 days of:¶

(a) A determination that preferred worker benefits will not be provided;¶

(b) Termination of the Preferred Worker Program agreement;¶

(c) Termination of the job offer; or¶

(d) The temporary modified position ends and the worksite modifications are still in progress.

Statutory/Other Authority: ORS 656.340, 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0145

RULE SUMMARY: Removes a requirement for vocational assistance eligibility that a worker must be authorized to work in the United States, to allow for limited training benefits under new rule 0511.

CHANGES TO RULE:

436-120-0145

Vocational Assistance Eligibility ¶¶

- (1) A worker whose permanent total disability benefits have been terminated by a final order is eligible for vocational assistance.¶¶
- (2) A worker is eligible for vocational assistance if all of the following conditions are met:¶¶
- (a) ~~The worker is authorized to work in the United States;~~¶¶
- ~~(b)~~ The worker is available in Oregon or within commuting distance of Oregon, unless:¶¶
- (A) The worker states in writing that within 30 days of being determined eligible for vocational assistance the worker will move back to Oregon, or within commuting distance of Oregon, at the worker's expense;¶¶
- (B) The worker did not work and live in Oregon at the time of the injury;¶¶
- (C) The worker needs to live outside of Oregon due to financial hardship, family circumstances over which the worker has no control, or other similar situation; or¶¶
- (D) The training program or supporting labor market for a specific vocational goal is only available outside of Oregon;¶¶
- ~~(e)~~ As a result of the limitations caused by the injury or aggravation, the worker:¶¶
- (A) Is not able to return to regular employment;¶¶
- (B) Is not able to return to suitable and available work with the employer at injury or aggravation; and¶¶
- (C) Has a substantial handicap to employment and requires assistance to overcome that handicap;¶¶
- ~~(d)~~ The worker was not employed in suitable employment for at least 60 days after the injury or aggravation;¶¶
- ~~(e)~~ The worker did not refuse or fail to make a reasonable effort in available light-duty work intended to result in suitable employment. Before finding the worker ineligible, the insurer must document the existence of one or more suitable jobs that would be available for the worker after completion of the light-duty work. If the employer at injury offers such employment to a worker who is not medically stationary, the offer must be made in accordance with OAR 436-060-0030;¶¶
- ~~(f)~~ The worker is available for vocational assistance. If the worker is not available, the insurer must determine if the reasons are for reasonable or unreasonable cause before finding the worker ineligible. If the reason was for incarceration, this reason must be stated in the notice to the worker. Declining vocational assistance to accept modified or new employment that results from an employer at injury activated use of the Preferred Worker Program, under OAR 436-110, is reasonable cause; and¶¶
- ~~(g)~~ The worker did not refuse or otherwise relinquish their rights to vocational assistance in writing.¶¶
- (3) Individuals covered under ORS 656.033, 656.046, 656.135, or 656.138 (work experience program participants, apprentices, trainees), are eligible for vocational assistance if they otherwise meet the eligibility requirements in section (2) of this rule. For purposes of vocational assistance:¶¶
- (a) The employer at injury is the district, college, or school conducting the program or project in which the individual was injured;¶¶
- (b) Regular employment is the job for which the individual was being trained at the time of the injury; and¶¶
- (c) The assumed wage upon which premium was based, but in no event less than minimum wage, should be used to determine suitable wage under OAR 436-120-0147.¶¶
- (4) The worker must participate in the vocational assistance process and must provide relevant information. If the worker does not participate, or fails to provide relevant information, the insurer must issue a written warning before finding the worker ineligible under this rule.¶¶
- (5) The worker must not misrepresent a matter material to evaluating eligibility.
- Statutory/Other Authority: ORS 656.340, ORS 656.726(4)
Statutes/Other Implemented: ORS 656.340, ORS 656.206

AMEND: 436-120-0147

RULE SUMMARY: Specifies when volunteer work is considered a "job at aggravation" or "job at injury."

Specifies the wage to be used for a volunteer job if it is the job at aggravation or job at injury.

CHANGES TO RULE:

436-120-0147

Establishing the Adjusted Weekly Wage ¶¶

(1) General provisions.¶¶

(a) To determine a suitable wage the insurer must first establish the adjusted weekly wage as described in this rule.¶¶

(b) The insurer must calculate the adjusted weekly wage whenever determining or redetermining a worker's eligibility for vocational assistance.¶¶

(c) All figures used in determining a weekly wage by this method must be supported by verifiable documentation such as the worker's state or federal tax returns, payroll records, or reports of earnings or unemployment insurance payments from the Oregon Employment Department.¶¶

(d) If the insurer is unable to obtain complete information to calculate the weekly wage under section (3) of this rule, but the worker does provide verifiable documentation to establish wages at the time of injury, the insurer must make a reasonable calculation of the worker's weekly wage based on the verifiable documentation available.¶¶

(2) Definitions.¶¶

For the purposes of this rule, the following definitions apply:¶¶

(a) "Adjusted weekly wage" is the wage currently paid as calculated under this rule.¶¶

(b) "Cost-of-living adjustments" or "collective bargaining adjustments" are increases or decreases in the wages of all workers performing the same or similar jobs for a specific employer. These adjustments are not variations in wages based on skills, merit, seniority, length of employment, or number of hours worked.¶¶

(c) "Earned income" means gross wages, salary, tips, commissions, incentive pay, bonuses, and the reasonable value of other consideration (such as housing, utilities, and food) received from all employers for services performed from all jobs held at the time of injury or aggravation. Earned income also means gross earnings from self-employment after deductions of business expenses excluding depreciation. Earned income does not include fringe benefits such as medical, life, or disability insurance, employer contributions to pension plans, or reimbursement of the worker's employment expenses such as mileage or equipment rental.¶¶

(d) "Job at aggravation" means the job or jobs the worker held on the date of the aggravation claim or, for a worker not employed at the time of aggravation, the last job or concurrent jobs held before the aggravation. The job does not need to be subject employment. Volunteer work is not a job for purposes of this subsection unless the worker is a subject worker under ORS 656.031 or 656.039, and the worker originally sustained the compensable injury at the volunteer job.¶¶

(e) "Job at injury" is the job on which the worker originally sustained the compensable injury. For an occupational disease, the job at injury is the job the worker held at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease. Volunteer work is not a job for purposes of this subsection: unless the worker is a subject worker under ORS 656.031 or 656.039, and the worker originally sustained the compensable injury at the volunteer job.¶¶

(f) "Permanent employment" is a job with no projected end date or a job that had no projected end date at the time of hire. Permanent employment may be year-round or seasonal.¶¶

(g) "Permanent, year-round employment" is permanent employment in which the worker worked or was scheduled or projected to work in 48 or more calendar weeks a year. Paid leave is counted as work time. Permanent year-round employment includes trial service. It does not include employment with an annual salary set by contract or self-employment.¶¶

(h) "Temporary disability" means wage loss replacement for the job at injury.¶¶

(i) "Time of injury" means, in the case of an injury, the date of injury or, in the case of an occupational disease, the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease.¶¶

(j) "Trial service" is employment designed to lead automatically to permanent, year-round employment subject only to the employee's satisfactory performance during the trial service period.¶¶

(3) Determining weekly wage.¶¶

The insurer must determine the nature of the job at injury and any other paid jobs held at the time of injury, or the job or jobs at aggravation, and this must include contacting the employer at injury to verify the worker's employment status.¶¶

(a) When the job at injury or any other paid jobs held at the time of injury, or the job at aggravation was seasonal or temporary, calculate the worker's weekly wage as follows, then convert to the adjusted weekly wage as described in section (4) of this rule:¶¶

(A) When the worker's regular employment is the job at injury and the worker did not hold more than one job at the time of injury, and did not receive unemployment insurance benefits during the 52 weeks before the injury, use the same wage upon which temporary disability was based.¶¶

(B) When the worker's regular employment is the job at aggravation and the worker did not hold more than one job at the time of aggravation, and did not receive unemployment insurance benefits during the 52 weeks before the aggravation, use the same methods used to calculate temporary disability as described under OAR 436-060-0025 that was in effect on the date of injury.¶¶

(C) When the worker held more than one job at the time of injury or aggravation, and did not receive unemployment insurance payments during the 52 weeks before the date of the injury or aggravation, divide the worker's earned income by the number of weeks the worker worked in those jobs during the 52 weeks before the date of injury or aggravation.¶¶

(D) When the worker held one or more jobs at the time of injury or aggravation, and received unemployment insurance payments during the 52 weeks before the date of the injury or aggravation, combine the earned income with the unemployment insurance payments and divide the total by the number of weeks the worker worked in those jobs and received unemployment insurance payments during the 52 weeks before the date of the injury or aggravation.¶¶

(b) When subsection (3)(a) of this rule does not apply, calculate the worker's weekly wage as follows, then convert to the adjusted weekly wage as described in section (4) of this rule:¶¶

(A) When the worker's regular employment is the job at injury and the worker did not hold more than one job at the time of injury, use the same wage upon which temporary disability was based.¶¶

(B) When the worker's regular employment is the job at injury and the worker held more than one job at the time of injury, use the same methods used to calculate temporary disability as described under OAR 436-060-0025 that was in effect on the date of injury. The job does not need to be subject employment. ~~Volunteer work is not a job for purposes of this paragraph.~~¶¶

(C) When the worker's regular employment is the job at aggravation, use the same methods used to calculate temporary disability as described under OAR 436-060-0025 that was in effect on the date of injury.¶¶

(c) When a volunteer job is the job at injury or job at aggravation, the weekly wage for the volunteer job is the assumed wage used to determine the employer's premium. ¶¶

(4) Adjusted weekly wage.¶¶

After arriving at the worker's weekly wage under section (3) of this rule, establish the adjusted weekly wage by determining the percentage increase or decrease from the date of injury or aggravation, or last day worked before aggravation, to the date of calculation, as follows:¶¶

(a) Contact the employer at injury regarding any cost-of-living or collective bargaining adjustments for workers performing the same job. Adjust the total of all of the weekly wages from section (3) of this rule by any percentage increase or decrease;¶¶

(b) If the employer at injury is no longer in business and the worker's job was covered by a union contract, contact the applicable union for any cost-of-living or collective bargaining adjustments. Adjust the total of all of the weekly wages from section (3) of this rule by the percentage increase or decrease;¶¶

(c) If the employer at injury is no longer in business or does not currently employ workers in the same job category, adjust the total of all of the weekly wages from section (3) of this rule by the appropriate factor from the cost-of-living matrix in Bulletin 124; or¶¶

(d) If the worker's regular employment was the employment the worker held at the time of aggravation, adjust the total of all of the weekly wages from section (3) of this rule by the appropriate factor from the cost-of-living matrix in Bulletin 124.

Statutory/Other Authority: ORS 656.340(9), 656.726(4)

Statutes/Other Implemented: ORS 656.340(5)(6)

RULE SUMMARY: Revised to correct grammar in section (1).

CHANGES TO RULE:

436-120-0165

End of Eligibility for Vocational Assistance ¶¶

(1) Reasons for ending eligibility. A worker's eligibility for vocational assistance ends when any of the following conditions apply:¶¶

(a) Based on new information that did not exist or that could not have been obtained with reasonable effort at the time the insurer determined eligibility, the worker no longer meets the eligibility requirements;¶¶

(b) The worker has been employed in suitable employment for at least 60 days after the date of injury or date of aggravation;¶¶

(c) The worker has been employed in suitable employment that is modified or new employment resulting from an employer-at-injury activated use of the Preferred Worker Program under OAR 436-110 and:¶¶

(A) If there are is no worksite modifications, premium exemption has been effective for 12 months;¶¶

(B) If there is a worksite modification, 12 months have passed since the director determined it to be complete; or¶¶

(C) During the 12-month period in paragraph (A) or (B), the worker is terminated for cause or voluntarily resigns for a reason unrelated to the work injury;¶¶

(d) The worker, before beginning an authorized return-to-work plan, refused an offer of suitable employment. If the employer-at-injury offers employment to a worker who is not medically stationary, the offer must be made in accordance with OAR 436-060-0030;¶¶

(e) The worker, before beginning an authorized return-to-work plan, left suitable employment after the injury or aggravation for a reason unrelated to the limitations caused by the injury;¶¶

(f) The worker, before beginning an authorized return-to-work plan, refused or failed to make a reasonable effort in available light-duty work intended to result in suitable employment. Before ending eligibility, the insurer must document the existence of one or more suitable jobs that would be available for the worker after completion of the light-duty work. If the employer at injury offers such employment to a worker who is not medically stationary, the offer must be made in accordance with OAR 436-060-0030;¶¶

(g) The worker, after completing an authorized training plan, refused an offer of suitable employment;¶¶

(h) The worker declined or became unavailable for vocational assistance.¶¶

(A) The insurer must determine if the reasons are for reasonable or unreasonable cause before ending the worker's eligibility.¶¶

(B) If the reason was for incarceration, this reason must be stated in the notice to the worker.¶¶

(C) Declining vocational assistance to accept modified or new employment that results from an employer-at-injury activated use of the Preferred Worker Program, under OAR 436-110, is reasonable cause;¶¶

(i) The worker refused a suitable training site after the counselor and worker have agreed in writing upon a return-to-work goal;¶¶

(j) The worker failed after written warning to participate in the development or implementation of a return-to-work plan. No written warning is required if the worker fails to attend two consecutive training days and fails, without reasonable cause, to notify the counselor or the insurer by the close of the next business day;¶¶

(k) The worker's lack of suitable employment cannot be resolved by providing vocational assistance. This includes circumstances in which the worker cannot benefit from, or participate in, vocational assistance because of medical conditions unrelated to the injury;¶¶

(l) The worker misrepresented information relevant to providing vocational assistance;¶¶

(m) The worker refused after written warning to return property provided by the insurer or reimburse the insurer as required. No vocational assistance will be provided under subsequent openings of the claim until the worker returns the property or reimburses the funds;¶¶

(n) The worker misused funds provided for the purchase of property or services. No vocational assistance will be provided under subsequent openings of the claim until the worker reimburses the insurer for the misused funds;¶¶

(o) After written warning the worker continues to harass any participant to the vocational process. This subsection does not apply if such behavior is the result of a documented medical or mental condition;¶¶

(p) The worker entered into a claim disposition agreement and disposed of vocational rights. The parties may agree in writing to suspend vocational assistance pending approval of the agreement by the Workers' Compensation Board. The insurer must end eligibility when the Workers' Compensation Board approves the claim disposition agreement that disposes of vocational assistance rights. No notice regarding the end of eligibility is required; or¶¶

(q) The worker received maximum direct employment services and is not entitled to other categories of vocational

assistance.¶

(2) Notice of end of eligibility. When an insurer ends a worker's eligibility for vocational assistance, the insurer must mail to the worker a Notice of End of Eligibility for Vocational Assistance within five days of the end of eligibility date. The notice must include:¶

(a) The date when eligibility ended. The effective date is the worker's last date of eligibility; and¶

(b) The reason the worker's eligibility for vocational assistance is ending. However, notice is not required if the insurer is ending the worker's eligibility because the worker has given up their vocational assistance rights through a claim disposition agreement.¶

(3) Report to director. When an insurer ends a worker's eligibility for vocational assistance, the insurer must submit to the division, within 30 days after the date eligibility ends, Form 2800, "Vocational Closure Report." The report must include:¶

(a) The effective date for the end of eligibility;¶

(b) The reason for the end of eligibility; and¶

(c) Return-to-work and provider information.

Statutory/Other Authority: ORS 656.340, 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0175

RULE SUMMARY: Revises when an insurer must redetermine a worker's eligibility, if the worker was previously found ineligible because they were not authorized to work in the United States.

CHANGES TO RULE:

436-120-0175

Redetermining Eligibility for Vocational Assistance ¶

(1) If a worker was previously determined ineligible for vocational assistance or the worker's eligibility for vocational assistance ended, the insurer must redetermine eligibility within 30 days of notification of a change of any of these circumstances:¶

(1a) The worker, for reasonable cause, was unavailable for vocational assistance and is now available;¶

(2b) The worker's lack of suitable employment could not be resolved by providing vocational assistance. The insurer may require the worker to provide evidence that circumstances have changed;¶

(3c) The worker declined vocational assistance to accept modified or new employment that resulted from an employer at injury activated use of preferred worker benefits under OAR 436-110. If the job was not suitable, the worker must request redetermination within 30 days of termination of the employment for which preferred worker benefits were provided;¶

(4d) The worker was not available for vocational assistance in Oregon or within commuting distance of Oregon. The worker must request redetermination within six months of receiving the insurer's notice that the worker was not eligible for this reason;¶

(5e) The worker, who was not authorized to work in the United States, is now Before claim closure, the worker's limitations due to the injury became more restrictive;¶

(f) Before claim closure, the insurer accepts a new condition that was not considered in the original determination of the worker's eligibility; or¶

(g) The worker's average weekly wage is redetermined and increased.¶

(2) The insurer must redetermine eligibility when the insurer determined the worker ineligible or ended eligibility solely on the basis that the worker was not authorized to work in the United States.:¶

(a) Within six months of the date 30 days of July 1, 2024, if the worker received the insurer's notice of ineligibility or end of eligibility between Dec. 30, 2023, and June 30, 2024.¶

(b) Within 30 days of receipt of the worker's receipt of request for redetermination if the worker: ¶

(A) Received the insurer's notice of ineligibility or end of eligibility, the worker must: before Dec. 30, 2023; ¶

(aB) Requested redetermination; and within six months of the date they received the insurer's notice of ineligibility or end of eligibility; ¶

(bC) Submitted evidence to the insurer within six months of the date they received the insurer's notice of ineligibility or end of eligibility that the worker has applied for authorization to work in the United States and was awaiting a decision by the U.S. Citizenship and Immigration Services (USCIS). The worker must provide the insurer with a copy of any decision by the USCIS within 30 days of receipt. The insurer mu; and ¶

(D) Submitted a second request for redetermination on or after July 1, 2024.¶

(c) A worker who requests redetermine eligibility upon receipt of documentation of the worker's sation under (b) of this section is not required to be authorizationed to work in the United States;¶

(6) Before claim closure, the worker's limitations due to the injury became more restrictive;¶

(7) Before claim closure, the insurer accepts a new condition that was not considered in the original determination of the worker's eligibility; or¶

(8) The worker's average weekly wage is redetermined and increased. However, the worker may not request redetermination after the 30th day from receipt of any decision by USCIS.

Statutory/Other Authority: ORS 656.340, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0177

RULE SUMMARY: Adds a new category of vocational assistance, limited training.

CHANGES TO RULE:

436-120-0177

Selection of Category of Vocational Assistance ¶¶

(1) The insurer must select one of the following categories of vocational assistance before referring a worker to a counselor:¶¶

(a) Direct employment services, if the worker has the necessary transferable skills to obtain suitable new employment.¶¶

(b) Training, if the worker needs training in order to return to employment that pays a wage significantly closer to 100 percent of the adjusted weekly wage. "Significantly closer" may vary depending on several factors, including, but not limited to: the worker's wage at injury, adaptability, skills, geographic location, limitations, and the potential for the worker's income to increase with time as the result of training.¶¶

(c) Limited training, if the worker is not authorized to work in the United States and needs training in order to return to employment that pays a wage significantly closer to 100 percent of the adjusted weekly wage. "Significantly closer" may vary depending on several factors, including, but not limited to: the worker's wage at injury, adaptability, skills, geographic location, limitations, and the potential for the worker's income to increase with time as the result of training.¶¶

(2) The insurer must notify the worker of the category selection and the reason for the selection in the NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE issued under OAR 436-120-0115(9).¶¶

(3) The insurer must reconsider the category of vocational assistance within 30 days of the insurer's knowledge of a change in circumstances including, but not limited to:¶¶

(a) A change in the worker's permanent limitations;¶¶

(b) A change in the labor market; or¶¶

(c) The category of vocational assistance proves to be inappropriate.¶¶

(4) The insurer must notify the worker within five days if the reconsideration under section (3) results in a change in the vocational assistance category.

Statutory/Other Authority: ORS 656.340(9), 656.726(4)

Statutes/Other Implemented: ORS 656.340(7)

AMEND: 436-120-0185

RULE SUMMARY: Adds a 14-day timeframe in which insurers must provide vocational counselors relevant vocational and medical information

CHANGES TO RULE:

436-120-0185

Choosing a Counselor ¶¶

(1) Choosing a counselor.¶¶

(a) The insurer and worker must agree on a counselor within 14 days of the worker being determined eligible for vocational assistance.¶¶

(b) When the parties agree on a counselor, the insurer must mail the worker a NOTICE OF SELECTION OF VOCATIONAL COUNSELOR.¶¶

(c) If the parties do not agree on a counselor, the insurer must notify the division within five days, and the director will select a counselor.¶¶

(2) Changing counselors.¶¶

(a) If the worker or insurer requests a change in counselor, the insurer and worker must agree on a new counselor within 14 days of the request.¶¶

(b) If the parties do not agree on a new counselor, the insurer must refer the matter to the division within five days.¶¶

(c) Any time there is a change in counselor, the insurer must mail the worker a NOTICE OF CHANGE OF VOCATIONAL COUNSELOR.¶¶

(3) Providing documents to selected counselor¶¶

The insurer must provide the vocational counselor selected under (1) or (2) of this rule all relevant vocational and medical information within 14 days of mailing the notice under (1)(b) or (2)(c) of this rule.

Statutory/Other Authority: ORS 656.340, 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0410

RULE SUMMARY: Revises the duration of an on-the-job evaluation from 5 hours daily for four consecutive days to 20 hours in a period of seven consecutive days.

CHANGES TO RULE:

436-120-0410

Determining a Vocational Goal ¶¶

A counselor must determine a suitable vocational goal for the worker using one or more of the following:¶

(1) Vocational testing. Vocational testing must be administered by an individual certified to administer the test.¶
(2) Job analysis. A job analysis is a detailed description of the physical and other demands of a job based on direct observation of the job.¶

(3) On-the-job evaluation. An on-the-job evaluation must evaluate a worker's work traits, aptitudes, limitations, potentials, and habits in an actual job environment.¶

(a) The counselor must perform a job analysis to determine if the job is within the worker's capacities. The insurer must submit the job analysis to the attending physician if there is any question about the appropriateness of the job.¶

(b) The evaluation should normally be no less than ~~five~~20 hours daily ~~for four~~ in a period of seven consecutive days and should normally last no longer than 30 days.¶

(c) The evaluation does not establish any employer-employee relationship.¶

(d) A written report must evaluate the worker's performance in the areas originally identified for assessment.¶

(4) Labor market search.¶

(a) A labor market search is obtained from direct contact with employers, other actual labor market information, or from other surveys completed within 90 days of the report date.¶

(b) A labor market search is needed when standard labor market reference materials do not have adequate information upon which to base a decision, or there are questions about a worker's specific limitations, training, and skills that must be addressed with employers to determine if a reasonable labor market exists.¶

(c) The person providing the information must have hiring responsibility or direct knowledge of the job's requirements and the job must exist at the firm contacted.¶

(d) The labor market search report must include, but is not limited to:¶

(A) Date of contact;¶

(B) Firm name, address, and telephone number;¶

(C) Name and title of person contacted;¶

(D) Qualifications of persons recently hired;¶

(E) Physical requirements;¶

(F) Wages paid;¶

(G) Condition of hire (full-time, part-time, seasonal, temporary);¶

(H) Date and number of last hire(s); and¶

(I) Available and anticipated openings.¶

(e) Specific openings found in the course of a labor market search are not, in themselves, proof a reasonable labor market exists.

Statutory/Other Authority: ORS 656.340(9), 656.726(4)

Statutes/Other Implemented: ORS 656.340(7)

AMEND: 436-120-0443

RULE SUMMARY: Revises references from an "approved training plan" to an "authorized training plan" and "job placement assistance" to "direct employment services."

Revises for clarity that the worker is entitled to "direct employment services" instead of "job placement assistance."

CHANGES TO RULE:

436-120-0443

Training - General ¶

- (1) Training services include but are not limited to plan development, training, monthly monitoring of training progress, and job placement services.¶
- (2) The training plan must be developed and monitored by a counselor.¶
- (3) The selection of plan objectives and the kind of training must attempt to minimize the length and cost of training necessary to prepare the worker for suitable employment.¶
- (4) If there are any changes made to the original training plan, an addendum to Form 1081, "Training Plan," must be completed, signed by all parties, and submitted to the division.¶
- (5) Basic education may be offered, with or without other training components, to raise the worker's education to a level to enable the worker to obtain suitable employment.¶
- (6) On-the-job training prepares the worker for permanent, suitable employment with the training employer and for employment in the labor market at large. On-the-job training must be considered first in developing a training plan.¶
- (7) Occupational skills training is offered through a community college, based on a predetermined curriculum, at the training employer's location.¶
- (8) Formal training may be offered through a vocational school licensed by an appropriate licensing body, community college, or other post-secondary educational facility that is part of a state system of higher education.¶
- (9) Rehabilitation facilities training provides evaluation, training, and employment for severely disabled individuals.¶
- (10) Notwithstanding OAR 436-120-0145(2)(b), the director may order the insurer, or the insurer may elect, to provide training outside Oregon if such training would be more timely, appropriate, or cost effective than other alternatives.¶
- (11) Training status continues during the following breaks:¶
 - (a) A regularly scheduled break of not more than six weeks between fixed school terms;¶
 - (b) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; or¶
 - (c) A period of illness or recuperation of the worker that does not prevent completion of the training by the planned date.¶
- (12) The insurer must pay the worker temporary disability compensation, under ORS 656.268 and 656.340, when the worker is actively engaged in an approved ~~approved~~ authorized training plan and there is a Form 1081, "Training Plan," signed by the worker, the insurer, and the counselor who developed the plan.¶
- (13) Temporary disability compensation is limited for each eligibility period to 16 months unless extended to 21 months by the insurer or ordered by the director when the worker provides good cause. Good cause may include but is not limited to the reasons given under section (15) of this rule. In no event may temporary disability compensation during training be paid for more than 21 months.¶
- (14) In addition to other requirements in OAR chapter 436, the insurer may not end temporary disability benefits until written notice under OAR 436-060-0015(7) has been mailed or delivered to the worker and the worker's attorney, if the worker is represented.¶
- (15) Training costs may be paid for periods longer than 21 months. Reasons for extending training may include but are not limited to:¶
 - (a) Reasons beyond the worker's control;¶
 - (b) The worker has an exceptional disability, which is a disability equal to or greater than the complete loss, or loss of use, of both legs, or a brain injury that results in impairment equal or greater than Class 3 as defined in OAR 436-035-0390; or¶
 - (c) The worker has an exceptional loss of earning capacity, which exists when no suitable training plan of 18 months or less will eliminate the worker's substantial handicap to employment. The extension must allow the worker to obtain, at the time of completion of the training program, a wage that is as close as possible to the worker's adjusted weekly wage and greater than could be expected with a shorter training program.¶

(16) An eligible worker is entitled to four months of ~~job placement assistance~~ direct employment services after completion of training.¶

(17) When the worker returns to work following training, the insurer must monitor the worker's progress for at least 60 days to assure the suitability of the employment before ending eligibility.¶

(18) If the worker chooses a training plan period longer than the worker is entitled to receive under these rules, the worker may supplement training provided by the insurer by completing self-sponsored training or studies. For the purpose of this rule, self-sponsored means the worker is obligated to pay for the training.¶

(a) The first day of training provided by the insurer will be considered the training start date and the last day of training provided by the insurer will be the training end date.¶

(b) All self-sponsored training must be completed before the training start date unless the parties otherwise agree.¶

(c) During self-sponsored training, the insurer may provide optional services under OAR 436-120-0187, including but not limited to payment of expenses for tuition, fees, books, and supplies.¶

(d) The training plan support document must describe how the worker-sponsored training and the training provided by the insurer will combine to prepare the worker for suitable employment.¶

(19) The insurer must provide further training to a worker if the initial plan will not be or was not successful to prepare the worker for suitable employment.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.262 (OL2022, ch. 73, sections 1 & 2), ORS 656.340

AMEND: 436-120-0445

RULE SUMMARY: Revises "a" worker to "the" worker

CHANGES TO RULE:

436-120-0445

Training Requirements ¶¶

- (1) Basic education. Basic education is limited to nine months unless extended by the insurer.¶¶
- (2) On-the-job training.¶¶
 - (a) On-the-job training time is limited to 12 months unless extended by the insurer.¶¶
 - (b) The insurer must reimburse the training employer for a portion of the worker's wages.¶¶
 - (c) The on-the-job training contract between the training employer, the insurer, and the worker must include, but is not limited to:¶¶
 - (A) The worker's name;¶¶
 - (B) The employer's legal business name;¶¶
 - (C) The employer's current workers' compensation insurance policy number;¶¶
 - (D) The name of the individual providing the training;¶¶
 - (E) The training plan start and end dates;¶¶
 - (F) The job title and duties;¶¶
 - (G) The skills to be taught;¶¶
 - (H) The base wage and the terms of wage reimbursement;¶¶
 - (I) An agreement that the employer will pay all taxes normally paid on the entire wage and will maintain workers' compensation insurance for the trainee; and¶¶
 - (J) An acknowledgement that the training may not prepare the worker for jobs elsewhere, if the training prepares ~~at~~the worker for a job unique to the training site.¶¶
 - (d) The insurer must pay temporary disability compensation as provided in ORS 656.268.¶¶
 - (e) Unless there is a need to accommodate the worker's documented medical condition or class schedule, the worker's schedule must be the same as for a regular full-time employee.¶¶
- (3) Occupational skills training.¶¶
 - (a) Occupational skills training is limited to 15 months unless extended by the insurer.¶¶
 - (b) The training is primarily for the worker's benefit. The worker may not receive wages.¶¶
 - (c) Training does not establish any employer-employee relationship with the training employer. The training employer makes no guarantee of employing the worker when the training is completed.¶¶
 - (d) The training employer has a sufficient number of employees to accomplish its regular work and the training of the worker, and the worker does not displace an employee.¶¶
 - (e) Unless there is a need to accommodate the worker's documented medical condition or class schedule, the worker's schedule must be the same as for a regular full-time employee.¶¶
- (4) Formal training.¶¶
 - (a) Formal training time is limited to 18 months unless extended by the insurer.¶¶
 - (b) Course load must be consistent with the worker's abilities and limitations and the length of time since the worker last attended school.¶¶
 - (c) Courses must relate to the vocational goal.¶¶
- (5) Training before eligibility determined. If the worker begins or completes training between the date of injury and the date of the eligibility determination, and then the insurer finds the worker eligible for vocational assistance and finds the worker's training suitable, the insurer must reimburse the worker for costs required by that training and verified by the insurer or the director, including temporary disability as required under ORS 656.268 and 656.340.

Statutory/Other Authority: ORS 656.340(9), 656.726(4)

Statutes/Other Implemented: ORS 656.340

ADOPT: 436-120-0511

RULE SUMMARY: Includes eligibility criteria, benefits, and exclusions for a new category of vocational assistance, "Limited Training."

CHANGES TO RULE:

436-120-0511

Limited Training

(1) Eligibility.

A worker who is not authorized to work in the United States is only eligible for limited training. The worker must meet all eligibility requirements under OAR 436-120-0145.

(2) Limited training plan and benefits.

A limited training plan must meet all requirements and include all benefits specified under OAR 436-120-0443, OAR 436-120-0445, OAR 436-120-0500, and OAR 436-120-0510 unless otherwise specified in these rules.

(3) Limited training plan exclusions.

Limited training may not include any of the following:

(a) On-the-job training;

(b) Direct employment services;

(c) Job placement services;

(d) Return-to-work monitoring under OAR 436-120-0443(17); or

(e) Return-to-work services under OAR 436-120-0500(6).

(4) Re-evaluation of limited training plan.

The insurer must reconsider the category of vocational assistance under OAR 436-120-0177(3) if the worker becomes authorized to work in the United States before or during a limited training plan. A worker who is authorized to work in the United States is eligible for direct employment services or training.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0710

RULE SUMMARY: Increases the second residence allowance; the allowance must equal the rental expense reasonably necessary, plus not more than \$500 (previously \$200) a month toward all other expenses;

Revises the eligibility criteria for a living expense allowance for workers involved in an on-the-job vocational evaluation to "at least 20 hours in a period of seven consecutive days."

Increases the vehicle rental or lease amount from a maximum of \$1,000 to \$3,300.

Increases the "other purchases" maximum from \$1,000 to \$2,600.

CHANGES TO RULE:

436-120-0710

Direct Worker Purchases: Categories ¶¶

The insurer must provide the direct worker purchases listed in this rule if necessary for the worker to participate in vocational assistance or to meet the requirements of a suitable job. The insurer may not require the worker to submit a financial statement in order to qualify for direct worker purchases.¶¶

(1) Tuition, fees, books, and supplies. Payment for tuition, fees, books, and supplies for training or studies is limited to those items identified as mandatory by the instructional facility, trainer, or employer. The insurer must pay the cost in full, and may not require the worker to apply for grants to pay for tuition, books, or other expenses associated with training.¶¶

(2) Wage reimbursement. The amount of wage reimbursement for on-the-job training must be agreed to in a contract between the training employer and the insurer.¶¶

(3) Travel expenses. Travel expenses for transportation, meals, and lodging that are required for participation in vocational assistance, including but not limited to job search, required meetings with the counselor, and meetings with employers or at training sites as required by the plan or plan development. The conditions and rates for payment of travel expenses are as follows:¶¶

(a) Transportation costs will be paid at public transportation rates when public transportation is available; otherwise, mileage will be paid at the rate published in Bulletin 112. Costs incidental to mileage, such as parking fees, also will be paid. For workers receiving temporary total disability or equivalent income, private car mileage will be paid only for mileage in excess of the miles the worker traveled to and from work at the time of injury. Mileage payment in conjunction with moving expenses will be allowed only for one vehicle and for a single one-way trip. To receive reimbursement for private car mileage, the worker must provide the insurer with a copy of the driver's valid driver's license and proof of insurance coverage.¶¶

(b) For overnight travel, meal and lodging expenses will be reimbursed at the rate published in Bulletin 112.¶¶

(c) Payment for special travel costs will be made in excess of the amounts specified in this section when special transportation or lodging is necessary because of the physical needs of the worker, or when the insurer finds prevailing costs in the travel area are substantially higher than average.¶¶

(4) Tools and equipment. Payment for tools and equipment for training or employment is limited to items identified as mandatory for the training or initial employment, such as starter sets. Purchases may not include what the trainer or employer ordinarily would provide to all employees or trainees in the training or employment, or what the worker already owns.¶¶

(5) Moving expenses. Payment for moving expenses is limited to workers with employment or training outside reasonable commuting distance. In determining the necessity of paying moving expenses, the insurer may consider the availability of employment or training that does not require moving, or that requires less than the proposed moving distance. Payment is limited to moving household goods weighing not more than 10,000 pounds. If necessary, payment includes reasonable costs of meals and lodging for the worker's family and mileage under section (3) of this rule.¶¶

(6) Second residence allowance. The purpose of the second residence allowance is to enable the worker to participate in training outside reasonable commuting distance. The allowance must equal the rental expense reasonably necessary, plus not more than \$2500 a month toward all other expenses of the second residence, excluding refundable deposits. In order to qualify for second residence allowance, the worker must maintain a permanent residence.¶¶

(7) Primary residence allowance. The primary residence allowance applies when the worker must change residence for training or employment. Payment includes the first month's rent and the last month's rent only if required before moving in.¶¶

(8) Medical and psychological examinations. Payment for medical examinations and psychological examinations must be for conditions not related to the compensable injury when necessary for determining the worker's ability

to participate in vocational assistance.¶

(9) Physical or work capacities evaluations.¶

(10) Living expense allowance. Payment for living expenses is limited to workers involved in an on-the-job vocational evaluation at least five ~~20~~ hours daily for four or more ~~in a period of seven~~ consecutive days, and not receiving temporary disability payments. ~~The worker will not be barred from receiving a living expense allowance if the worker is unable to participate five hours daily because of limitations caused by the injury. Payment must be based on the worker's temporary total disability rate~~ amount of the allowance is equivalent to the amount that would be paid for the temporary total disability for the duration of the evaluation if the worker's claim were reopened.¶

(11) Work adjustment, on-the-job evaluation, or situational assessment costs.¶

(12) Membership fees and occupational certifications, licenses, and related testing costs. Payment for membership fees, occupational certifications and licenses, and related testing costs is limited to \$500.¶

(13) Clothing. Clothing purchases may not include items the trainer or employer would provide or the worker already possesses.¶

(14) Child or disabled adult care services. Child or disabled adult care services are payable when required to enable the worker to participate in vocational assistance at rates prescribed by the Oregon Department of Human Services. For workers receiving temporary total disability compensation or equivalent income, these costs will be paid only when in excess of what the worker paid for such services at the time of injury, adjusted using the cost-of-living matrix in Bulletin 124.¶

(15) Dental work, eyeglasses, hearing aids, and prosthetic devices. Payment for dental work, eyeglasses, hearing aids, and prosthetic devices is required even if not related to the compensable injury if they will enable the worker to obtain suitable employment or participate in training.¶

(16) Union dues and fees. Payment for labor union dues and fees is limited to initiation fees, or back dues and one month's current dues.¶

(17) Vehicle rental or lease. Payment for vehicle rental or lease is required when there is no reasonable alternative enabling the worker to participate in vocational assistance or accept an available job. The worker must provide the insurer with proof of a valid driver's license and insurance coverage. Payment is limited to ~~\$1,03,300~~.¶

(18) Other purchases. Payment for other purchases the insurer considers necessary for the worker's participation in vocational assistance is limited to ~~\$1,02,600~~.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0720

RULE SUMMARY: Revises the timeframe in which the insurer must pay the provider's bill from 30 days to 60 days.
Removes a cross reference to OAR 436-120-0005

CHANGES TO RULE:

436-120-0720
Fee Schedule ¶¶

(1) The director has established the fee schedule in section (3) of this rule for professional costs and direct worker purchases. The schedule sets maximum spending limits per claim opening for each category; however, the insurer may spend more than the maximum limit. Spending limits will be adjusted annually, effective July 1, based on the conversion factor described in ~~OAR 436-120-0005~~ and published with the cost-of-living matrix in Bulletin 124.¶¶

(2) For workers needing an extended training plan under OAR 436-120-0443, the fee schedule spending limits for the Training category and Direct Employment/Training Combined category listed below must be increased by 30 percent.¶¶

(3) Amounts include professional costs, travel and wait time, and other travel expenses: [Table not included. See ED. NOTE.]¶¶

NOTE: *Each limit is shown as a percentage of Oregon's state average weekly wage (SAWW), determined under ORS 656.211. Dollar amounts are published in Bulletin 124 and are adjusted annually, effective July 1, based on changes in the SAWW.¶¶

(4) The insurer must pay, within ~~30~~60 days of receipt, the provider's bill for services provided under the insurer-provider agreement. The insurer may not deny payment on the grounds the worker was not eligible for the assistance if the provider performed the services in good faith without knowledge of the ineligibility.¶¶

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 656.340(9), 656.726(4)

Statutes/Other Implemented: ORS 656.340, 656.258

AMEND: 436-120-0820

RULE SUMMARY: Specifies that Form 1880 must be submitted with a renewal of certification.

CHANGES TO RULE:

436-120-0820

Renewal of Certification ¶¶

(1) Required documentation. A certified individual must renew their certification every five years by submitting Form 1880, "Vocational Assistance Certification Program Individual Certification under OAR 436-120," and the following documentation to the division no later than 30 days before the end of the certification period:¶¶

(a) Current certification by the Commission on Rehabilitation Counselor Certification (CRCC), the Commission for Case Managers Certification (CCMC), or the Certification of Disability Management Specialists Commission (CDMSC); or¶¶

(b) Verification of a minimum of 60 hours of continuing education units under this rule within the five years before renewal.¶¶

(2) Continuing education.¶¶

(a) The director will accept continuing education units for:¶¶

(A) Training approved by the CRCC, CCMC, or CDMSC;¶¶

(B) Courses in or related to psychology, sociology, counseling, or vocational rehabilitation, if given by an accredited institution of higher learning;¶¶

(C) Training presented by the division pertaining to OAR 436-120, 436-105, or 436-110;¶¶

(D) Teaching a class or making a formal presentation to a group on a topic related to vocational rehabilitation; and¶¶

(E) Any continuing education program certified by the director for providers. Sixty minutes of continuing education will count as one unit, except as noted in subsection (b) of this section.¶¶

(b) In the case of college course work, the director will grant credit only for grades of C or above and will multiply the number of credit hours by six to establish the number of continuing education units.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.340

AMEND: 436-120-0840

RULE SUMMARY: Removes language that refers to policies, guidelines, or procedures issued by the director.

CHANGES TO RULE:

436-120-0840

Professional Standards for Providers and Counselors ¶¶

(1) Providers and counselors must:¶¶

(a) Determine eligibility and provide assistance in an objective manner not subject to any conditions other than those prescribed in these rules;¶¶

(b) Fully inform the worker of the categories and kinds of vocational assistance under OAR 436-120 and re-employment assistance under OAR 436-110;¶¶

(c) Document all case activities in legible file notes or reports;¶¶

(d) Provide only vocationally relevant information about workers in written and oral reports;¶¶

(e) Recommend workers only for suitable employment;¶¶

(f) Fully inform the worker of the purpose and results of all testing and evaluations; and¶¶

(g) Comply with generally accepted standards of conduct in the vocational rehabilitation profession.¶¶

(2) Providers and counselors may not:¶¶

(a) Provide evaluations or assistance if there is a conflict of interest or prejudice concerning the worker;¶¶

(b) Enter into any relationship with the worker to promote personal gain or the gain of a person or organization in which the provider or counselor has an interest;¶¶

(c) Engage in or tolerate sexual harassment of a worker. "Sexual harassment" means deliberate or repeated comments, gestures, or physical contact of a sexual nature;¶¶

(d) Violate any applicable state or federal civil rights law;¶¶

(e) Commit fraud, misrepresent, or make a serious error or omission in connection with an application for registration or certification;¶¶

(f) Commit fraud, misrepresent, or make a serious error or omission in connection with a report or return-to-work plan or the vocational assistance activities or responsibilities of a provider under OAR chapter 436;¶¶

(g) Engage in collusion to withhold information, or submit false or misleading information relevant to the determination of eligibility or provision of vocational assistance;¶¶

(h) Engage in collusion to violate these rules or other rules of the department, ~~or any policies, guidelines, or procedures issued by the director;~~¶¶

(i) Fail to comply with an order of the director to provide specific vocational assistance, except as provided in ORS 656.313; or¶¶

(j) Instruct any individual to make decisions or engage in behavior that is contrary to the requirements of these rules.

Statutory/Other Authority: ORS 656.340(9), ORS 656.726(4)

Statutes/Other Implemented: ORS 656.313, ORS 656.340