



# Oregon

Kate Brown, Governor

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Workers' Compensation Division  
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Nov. 3, 2021

## Proposed Changes to Workers' Compensation Rules

**Caption:** Claims processing location; claims recordkeeping; casual labor threshold

### **Extension of comment period through Nov. 24, 2021**

The Workers' Compensation Division proposes to amend:

OAR 436-050, "Employer/Insurer Coverage Responsibility" and  
OAR 436-060, "Claims Administration."

**The closing date for written comments, originally set as Oct. 25, 2021, is extended through (and includes) Nov. 24, 2021.**

**How can I make a comment?** Send written comments to:  
Email – [WCD.Policy@dcbs.oregon.gov](mailto:WCD.Policy@dcbs.oregon.gov)  
Attention: rules coordinator  
Workers' Compensation Division  
350 Winter Street NE (for courier or in-person delivery)  
PO Box 14480, Salem, OR 97309-0405  
Fax – 503-947-7514

**How can I get copies of the proposed rules and view testimony?**

Proposed rules and public testimony are available on the Workers' Compensation Division's website:  
<http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>. Or, call 971-286-0316 to get paper copies.

**Questions?** Contact Fred Bruyns, 971-286-0316.

**The remainder of this document is identical to the notice dated Sept. 29, 2021.**

***Auxiliary aids for persons with disabilities are available upon advance request.***

**Summary of proposed changes to OAR 436-050, “Employer/Insurer Coverage Responsibility”:**

- Amended rule 0005 revises the definition of claims processing location, replacing a requirement to “keep” records with a requirement to “make records available.”
- Amended rule 0040 defines “sole proprietorship,” as the term is used in section (1) of the rule.
- Amended rule 0045:
  - Defines casual labor and explains that the casual labor threshold will be published by a department bulletin; and
  - Has minor wording changes to enhance clarity.
- Amended rule 0110:
  - Replaces a requirement to maintain records at the claims processing location with a requirement to make claims available from the location;
  - Establishes criteria for claims processing from remote locations, including locations outside the State of Oregon;
  - Creates a process for suspension and restoration of an insurer’s authority to process claims remotely from its designated claims processing locations; and
  - Removes a provision about assessment of civil penalties that is adopted under OAR 436-050-0500.
- Amended rule 0120:
  - Replaces a requirement to “keep” records with a requirement to “maintain” records at an Oregon claims processing location, and requires the insurer to “provide access” to those records to the director upon request; and
  - Specifies options for making physical and electronic records available, including archived records; and requires insurers to make records accessible to the director on request, either by making the records available at an Oregon claims processing location or by providing electronic access.
- Amended rule 0165 provides that Form 1810, "Surety Bond Rider" must be used for all changes to the name of the Principal.
- Amended rule 0180 provides a more specific citation to a document used in determining the claims processing administrative costs, adding “(Workers’ Compensation)” to “Schedule P, Part ID (Workers’ Compensation) of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner ....”
- Amended rule 0210:
  - Replaces a requirement to maintain records at the claims processing location with a requirement to make claims available from the location;
  - Establishes criteria for claims processing from remote locations, including locations outside the State of Oregon;
  - Creates a process for suspension and restoration of a self-insured employer’s authority to process claims remotely from its designated claims processing locations; and
  - Removes a provision about assessment of civil penalties that is adopted under OAR 436-050-0500.
- Amended rule 0220:
  - Replaces a requirement to “keep” records with a requirement to “maintain” records at an Oregon claims processing location, and requires self-insured employers to “provide access” to those records to the director upon request; and
  - Specifies options for making physical and electronic records available, including archived records, and requires self-insured employers to make records accessible to the director on request, either by making the records available at an Oregon claims processing location or by providing electronic access.

## Notice of proposed rulemaking hearing

- Amended rule 0230 clarifies that a self-insured employer requires the director's permission to operate an out-of-state claims processing location, rather than to process claims remotely from an Oregon location.
- Amended rule 0300 clarifies that in years when the director applies an IBNR factor greater than zero when determining the amount of a self-insured employer group's security deposit, the group is not required to maintain a common claims fund.
- Adopted rule 0500 describes the director's authority to assess a civil penalty under ORS 656.745(2) against an employer or insurer that violates ORS chapter 656, OAR 436-050, or an order of the director.

### **Summary of proposed changes to OAR 436-060, "Claims Administration":**

- Amended rule 0005 defines "date stamp."
- Amended rule 0015 requires the insurer, self-insured employer, or service company to send the worker contact information that will:
  - Reasonably lead the worker to an Oregon certified claims examiner during normal business hours; and
  - Reasonably ensure that inquiries from the worker are responded to within 48 hours, not including weekends or legal holidays.
- Amended rule 0017:
  - Amends the definition of "documents" to better align with the Workers' Compensation Board's rules on disclosure of documents under OAR 438-007-0015.
  - Specifies that an insurer or service company must date stamp each claim document in its possession on the date received;
  - Explains that the insurer may provide electronic or paper copies of documents requested under this rule, unless the worker's attorney, worker's beneficiary, or beneficiary's attorney specifically requests paper copies; and
  - Requires that if a requested claim record is lost or destroyed, the insurer must notify the director, in addition to the requester.
- Amended rule 0035 has a revised citation to a renumbered definition in rule 0005.
- Amended rule 0180 has a revised citation to a renumbered section in rule 0017.

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

**Need for the Rule(s):** Changes are needed primarily to implement passed legislation, enrolled HB 2039 (2021 Oregon Laws chapter 21) and enrolled HB 3188 (2021 Oregon Laws chapter 257). Additional changes are needed to provide clear direction regarding maintenance and release of claim records, to enhance clarity, and to provide that an existing form must be used to report a name change of a Principal on a surety bond.

**Documents Relied Upon, and where they are available:** Rulemaking advisory committee meeting records; Enrolled House Bill 2039 (2021 Oregon Laws chapter 21); Enrolled House Bill 3188 (2021 Oregon Laws chapter 257). These documents are available for public inspection upon request to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Please contact Fred Bruyns, rules coordinator, 503-947-7717, [WCD.Policy@oregon.gov](mailto:WCD.Policy@oregon.gov).

**Fiscal and Economic Impact:** The agency does not anticipate that any of the proposed rule changes, if adopted, will result in significant fiscal or economic impacts to the agency.

**Statement of Cost of Compliance:**

**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 rule.
- b. The agency estimates that proposed rule changes will not increase or decrease costs to units of local government for compliance with the rule, with the exception of some government entities that are self-insured – see 1.c. (below).
- c. The agency estimates that proposed rule changes will generally not increase or decrease costs to the public for compliance with the rule. However, the requirement that the insurer, self-insured employer, or service company send contact information to the worker that will reasonably lead the worker to an Oregon certified claims examiner during normal business hours, and reasonably ensure that inquiries from the worker are responded to within 48 hours, not including weekends or legal holidays, may add a small cost for companies that do not already meet these requirements. The agency does not have data it can use to project the actual costs, but invites testimony from affected companies.

**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:**

Insurers and self-insured employers are generally not small businesses, but as many as ten service companies are small businesses and are subject to these rules.

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

The requirement to send contact information to the worker as described in 1.c. (above) may add a small cost for companies that do not already meet these requirements.

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

The agency does not project additional costs for equipment, supplies, labor, or increased administration required for compliance with proposed rule changes.

**How were small businesses involved in the development of this rule?** The agency sent invitations to more than 4,000 stakeholders, including representatives of small businesses, to participate on a rulemaking advisory committee and to submit agenda topics. The advisory committee included members representing the interests of small businesses.

**Administrative Rule Advisory Committee consulted?:** Yes      **If not, why?**

  
Authorized Signer

Sally Coen  
Printed name

Sept. 29, 2021  
Date