



Oregon

Kate Brown, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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April 26, 2018

Proposed Changes to Workers' Compensation Rules

Caption: Worker leasing licensing, workers' compensation coverage of clients, recordkeeping, and reporting

Extension of comment period through May 21, 2018

The Workers' Compensation Division proposes changes to OAR:

- **436-050, Employer/Insurer Coverage Requirements and**
- **436-180, Worker Leasing**

The closing date for written comments, originally set as April 30, 2018, is extended through (and includes) May 21, 2018.

How can I make a comment?

Send written comments to:

Email – fred.h.bruyns@oregon.gov

Fred Bruyns, 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?

On the Workers' Compensation Division's website –

<http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>.

Or call 503-947-7717 to get free paper copies

Questions?

Contact Fred Bruyns, 503-947-7717.

The remainder of this document is identical to the notice dated March 29, 2018.

Summary of proposed changes

The agency proposes to amend “OAR 436-050, Employer/Insurer Coverage Responsibility,” as follows:

- Amended rule 0003 deletes references to ORS 656.850 and 656.855 from the “Statutes implemented” list, because worker leasing provisions will be removed from this rule division.
- Amended rule 0005 deletes definitions relevant to worker leasing, because worker leasing provisions will be removed from this rule division.
- Repealed rule 0400 addressed the responsibility to provide coverage under a worker leasing arrangement, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0410 addressed certain reporting requirements for worker leasing companies, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0420 explained differences between temporary workers and leased workers, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0440 described licensing requirements for worker leasing companies, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0450 explained recordkeeping and reporting requirements for worker leasing companies, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0455 explained recordkeeping and reporting requirements for self-insured worker leasing companies, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0460 explained reasons and procedures for suspension and revocation of a worker leasing license, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0470 explained how the director would monitor and audit worker leasing companies and their clients, and similar provisions will be adopted under OAR 436-180.
- Repealed rule 0480 listed violations of statutes and rules that could result in civil penalties against worker leasing companies, and similar provisions will be adopted under OAR 436-180.

The agency proposes to adopt “OAR 436-180, Worker Leasing,” as follows:

- Adopted rule 0003 describes the purpose of the rules in division 180 and explains that the director may waive procedural rules as justice requires, unless otherwise obligated by statute.
- Adopted rule 0005 defines words and terms used in division 180.
- Adopted rule 0008 describes procedures for parties to request administrative review and hearings.
- Adopted rule 0100 explains responsibilities of worker leasing companies to provide workers’ compensation coverage for their clients, and also when a client’s workers’ compensation policy coverage extends to leased workers; rule 0100 also states that a person may not obtain workers by contract and for a fee on a non-temporary basis from an unlicensed worker leasing company.
- Adopted rule 0110 describes reporting requirements for worker leasing companies – notice of client coverage, changes or corrections to coverage information, termination of client coverage, and reinstatement of coverage.
- Adopted rule 0120 explains the differences between leased workers and workers who are provided on a temporary basis.
- Adopted rule 0140 describes licensing requirements for worker leasing companies – full licensing, limited licensing, renewals, denials, disqualifications, and appeals of denials or disqualifications.
- Adopted rule 0150 describes recordkeeping requirements for worker leasing companies.

Notice of proposed rulemaking

- Adopted rule 0155 describes requirements for a self-insured worker leasing company to maintain and report to the National Council on Compensation Insurance (NCCI) separate statistical data for each client.
- Adopted rule 0160 explains procedures for suspension or revocation of a worker leasing license.
- Adopted rule 0170 explains how the director will monitor and audit worker leasing companies, temporary service providers, and clients.
- Adopted rule 0200 describes potential civil penalties that may be applied for violations of worker leasing statutes, rules, or orders of the director, and that any person or controlling person that knowingly makes a false statement may also be subject to penalties under ORS 656.990.

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 to streamline worker leasing requirements and to better align leasing in Oregon with related standards in other states.

Documents Relied Upon, and where they are available: 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 Fred Bruyns, rules coordinator, 503-947-7717, fred.h.bruyns@oregon.gov.

Fiscal and Economic Impact: The agency projects that proposed rule amendments, if adopted, will not increase costs for the agency, and may slightly improve the efficiency and effectiveness of staff dedicated to the licensing and monitoring of worker leasing companies.

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 have no cost-of-compliance impacts to state agencies for compliance with these rules.
- b. The agency estimates that proposed rule changes will have no cost-of-compliance impacts to units of local government for compliance with these rules.
- c. The agency estimates that proposed rule changes will have the following impacts to the public for compliance with these rules:

As proposed, worker leasing companies will be required to use standard forms to report changes or for reinstatement of workers' compensation coverage. These forms will be available on the agency's website and should provide a convenient and efficient way to report. Required forms should not significantly affect reporting costs. Worker leasing companies will not be able to submit an "other tax reporting number" for itself or its client, only a federal employee identification number (FEIN) on applications and forms; this will minimize risks involving reporting, use, and storage of Social Security Numbers and Individual Taxpayer Identification Numbers. A leasing company or client may readily obtain an FEIN from the Internal Revenue Service.

Worker leasing companies that meet certain qualifications will be provided with the option to apply for a limited worker leasing license with reduced reporting requirements. With the agency authorization, worker leasing companies will be able to submit some application materials electronically to reduce reporting costs.

The agency has clarified the methods used to distinguish leased workers from workers provided on a temporary basis to reduce the costs of compliance for temporary service providers.

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 primarily affected by the proposed rules are licensed leasing companies, their clients, and temporary employee providers. Oregon has 201 licensed leasing companies, and as many as 175 of these companies are small businesses. Leasing companies may have thousands of clients at any given time, and probably a substantial majority of the clients are small businesses. Oregon has 766 temporary help services providers, and about 660 of these are small businesses.

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

The agency projects there will be minor initial costs for leasing companies associated with required use of certain reporting forms, but that in the longer term, likely improvements in reporting accuracy should result in fewer form rejections and inquiries by the division. Overall, there should not be a significant impact, positive or negative.

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

The agency projects there will be no increased costs for equipment, supplies, labor or increased administration required for compliance.

How were small businesses involved in the development of this rule? The agency notified approximately 3,500 stakeholders, many of whom are small business representatives, of pending rulemaking affecting worker leasing. We invited interested people to volunteer to serve on the advisory committee.

Administrative Rule Advisory Committee consulted?: Yes.

<u>/s/ Louis Savage</u> Authorized Signer	Louis Savage Printed name	March 29, 2018 Date
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Mailing distribution:

US Mail, WCD – S, U, AT, CE, EG, NM, EC | agency email lists

Full text of proposed rules with marked revisions is available on the Workers’ Compensation Division’s website: <http://wcd.oregon.gov/laws/Pages/proposed-rules.aspx>, or request a copy (at no cost to you) from Fred Bruyns, 503-947-7717.



Employer/Insurer Coverage Responsibility Oregon Administrative Rules Chapter 436, Division 050

Proposed

NOTE: Proposed revisions are marked as follows: new text | ~~deleted text~~. Worker leasing rules will be repealed from OAR 436-050 (this division) and adopted under a new rule division, OAR 436-180

436-050-0003 Applicability and Purpose of these Rules

(1) Purpose.

These rules carry out the workers' compensation law related to employers' and insurers' responsibilities to cover subject workers for compensable injuries and illnesses.

(2) Applicability.

The requirements of OAR 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0190, 436-050-0200, 436-050-0205, 436-050-0210 and 436-050-0220 apply to both self-insured employers and self-insured employer groups. References in those rules to "employer" include employer groups, and references to "self-insured employer" include self-insured employer groups.

(3) Director's discretion.

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

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, ~~656.850, 656.855~~, and 731.475

Hist: Amended 12/24/15 as WCD Admin. Order 15-067, eff. 1/1/16

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

Amended xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx

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

436-050-0005 Definitions

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

(1) "Assigned claims agent" means an entity selected by the director to process the claims of a non-complying employer under ORS 656.054.

(2) "Audited financial statement" means a financial statement audited by an outside accounting firm.

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(3) "Cancel" or "cancellation" in relation to an insurance policy means ending the policy at a date before its expiration date.

~~(4) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.~~

~~(5) "Controlling person" means a person having substantial ownership or who is an officer or director of a corporation; a member or manager of a limited liability company; a partner of a partnership; or an individual who has, directly or indirectly, the power to direct or cause the direction of the management, policies, or operation of a person offering worker leasing services.~~

~~(6)~~ "Days" means calendar days unless otherwise specified.

~~(7)~~ "Default" means failure of an employer, insurer, or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612, and 656.614 at such intervals as the director directs.

~~(8)~~ "Director" means the director of the Department of Consumer and Business Services or the director's designee.

~~(9)~~ "Governmental subdivision" means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456, or regional council of governments created under ORS chapter 190.

~~(10)~~ "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

~~(11)~~ "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon.

~~(12) "Leased worker" means any worker provided by a worker leasing company on other than a "temporary basis" as described in OAR 436-050-0420.~~

~~(13)~~ "Nonrenewal" means the insurer's decision not to renew a policy at its expiration date.

~~(14)~~ "Person" means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in the ~~state~~ State of Oregon.

~~(15)~~ "Premium" means the monetary consideration for an insurance policy.

~~(16)~~ "Premium assessments" means moneys due the director under ORS 656.612 and 656.614.

~~(17)~~ "Process claims" is the determination of compensability and management of compensation by an Oregon certified claims examiner.

~~(18)~~ "Proof of coverage" has the same meaning as defined in OAR 436-162-0005.

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(1916) "Reinstatement" means the continuation or reestablishing of workers' compensation insurance coverage, as noted by the effective date of the reinstatement, under a workers' compensation insurance policy that was previously canceled.

(2017) "Renewal" or "renew" means the issuance of a policy succeeding a previously issued policy or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.

(2118) "Self-insured employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

(2219) "Self-insured employer group" means five or more employers certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.

(2320) "Service company" means the contracted agent for an insurer, self-insured employer, or self-insured employer group authorized to process claims and make payment of compensation on behalf of the insurer, self-insured employer, or self-insured employer group.

(2421) "State" means the State of Oregon.

(2522) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.

~~(26) "Worker leasing company" means a "person," as described in section (14) of this rule, who provides workers, by contract and for a fee, as established in ORS 656.850.~~

(2723) "Written" means information communicated in writing, and includes electronic records.

Statutory authority: ORS 656.726(4)

Statutes implemented: ORS 656.726(4)

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

Amended xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx

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

WORKER LEASING COMPANIES

436-050-0400 Responsibility for Providing Coverage under a Lease Arrangement

~~(1) Every worker leasing company providing workers to a client must satisfy the requirements of ORS 656.017, 656.407, or 656.419.~~

~~(2) Every worker leasing company providing leased workers to a client must also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active workers' compensation insurance policy proof of coverage on file with the director or is certified under ORS 656.430 as a self-insured employer. In the latter circumstance, the client's insurer or the self-insured employer will be deemed to provide insurance coverage for all leased workers and subject workers of the client.~~

~~(3) If an insured client allows its workers' compensation insurance policy to cancel or does not obtain a renewal of the policy, or if a self-insured client allows its certification to terminate, and the client continues to employ subject workers or has leased workers, the client will be considered a noncomplying employer unless the worker leasing company has made the filing with the director under OAR 436-050-0410(1).~~

~~(4) A client can obtain leased workers from only one worker leasing company at a time unless the client has an active workers' compensation insurance policy proof of coverage on file with the director or is certified under ORS 656.430 as a self-insured employer.~~

~~(5) A worker leasing company must not provide workers' compensation coverage for another worker leasing company doing business in Oregon whether or not any of the worker leasing companies involved is licensed for worker leasing in Oregon.~~

~~(6) A client employer may not obtain workers by contract and for a fee on a non-temporary basis from an unlicensed worker leasing company.~~

Statutory: ORS 656.726(4), 656.850 and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0410 Notice to Director of Lease Arrangement; Termination

~~(1) Within 14 days after the effective date of the lease arrangement or contract, a worker leasing company must file written notice with the director and its insurer, using Form 2465, "Worker Leasing Notice to the Department of Consumer and Business Services," that it is providing leased workers to a client and workers' compensation coverage. The notice must be correct and complete, and must include:~~

~~(a) The client's:~~

~~(A) Legal name;~~

~~(B) FEIN or other tax reporting number;~~

~~(C) Type of ownership;~~

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- ~~(D) Primary nature of business;~~
- ~~(E) Mailing address; and~~
- ~~(F) Street address in Oregon;~~
- ~~(b) The worker leasing company's:~~
 - ~~(A) Legal name;~~
 - ~~(B) Mailing address;~~
 - ~~(C) FEIN or other tax reporting number;~~
 - ~~(D) WCD worker leasing license number, if any;~~
 - ~~(E) Workers' compensation insurer's name (or "self-insured");~~
 - ~~(F) Effective date of leasing contract;~~
 - ~~(G) Contact name and phone number; and~~
 - ~~(H) A signature of a representative of the worker leasing company.~~

~~(2) A worker leasing company may terminate its obligation to provide workers' compensation coverage by giving to its insurer, its client, and the director written notice of the termination. A notice of termination must state the effective date and hour of termination, but the termination will be effective not less than 30 days after the notice is received by the director. Notice to the client under this section must be given by mail, addressed to the client at its last known address.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855
 Statutes implemented: ORS 656.850 and 656.855
 Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0420 Temporary Worker Distinguished from Leased Worker

~~(1) A person who provides a worker to work for a client will be considered to be providing the worker on a "temporary basis" only if there is contemporaneous written documentation that indicates the duration of the work to be performed and that the worker is provided for a client's special situation under ORS 656.850(1)(b). Contemporaneous documentation means documents that are created at the time the temporary service provider and the client employer make the arrangements for placement of the worker. Upon the director's request, the documentation must be provided to the director by either the temporary service provider or the client. Contemporaneous documentation in support of workers being provided on a temporary basis includes one or more of the following conditions:~~

- ~~(a) To cover employee absences or employee leaves, including but not limited to such things as maternity leave, vacation, jury duty, or illness from which the permanent worker will return to work;~~
- ~~(b) To fill a professional skill shortage, including but not limited to, professionals such as engineers, architects, electricians, plumbers, pharmacists, nurses, or other professions, whether licensed or not, to supplement or satisfy a shortage of that skill for a known~~

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~~duration. Supporting documentation may include license information and whether the worker is supplementing or satisfying a client employer's need for the skill;~~

~~(c) To staff a seasonal or sporadic increase in workload, indicated by a temporary increase in demand upon an employer's normal workload that requires additional assistance to meet the demand. When the increased demand ends, the additional positions are eliminated. Documentation must include what constitutes the demand establishing why this special situation is beyond the norm;~~

~~(d) To staff a special assignment or project outside of the routine activities of the business where the worker will be terminated or assigned to another temporary project upon completion. For example, a construction contractor may need assistance on a construction site to help clear branches and other debris after a windstorm so the regular construction crew can continue its work. Documentation must describe the project and why it is unusual;~~

~~(e) To hire a student worker that will be provided and paid by a school district or community college through a work experience program. Documentation must include the name of the school and the work experience program; or~~

~~(f) To cover special situations where the worker has a reasonable expectation of transitioning to permanent employment with the client employer and the client employer uses a pre-established probationary period in its overall employment selection program. Documentation must include copies of the client employer's written program or other evidence supporting the pre-established probationary period and overall employment selection program.~~

~~(2) If a person provides workers, by contract and for a fee, to work for a client and any such workers are not provided on a "temporary basis," that person will be considered a worker leasing company.~~

~~(3) If a person provides both leased workers and workers on a temporary basis, that person must maintain written records that show specifically which workers are provided on a temporary basis. If the written records do not specify which workers are provided on a temporary basis, all workers are deemed to be leased workers.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0440 Qualifications, Applications, and Renewals for License as a Worker Leasing Company

~~(1) Each person applying for initial license or renewal as a worker leasing company must:~~

~~(a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division to conduct business in this state;~~

~~(b) Maintain workers' compensation coverage under ORS 656.017; and~~

~~(c) Upon application approval and before licensure, pay the required licensing fee of \$2,050.~~

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~~(2) Each person applying for initial license or renewal as a worker leasing company must submit a completed Form 2466, "Application for Oregon Worker Leasing License." The form and accompanying documentation must include:~~

- ~~(a) Legal name;~~
- ~~(b) Mailing address;~~
- ~~(c) In state and out of state phone numbers;~~
- ~~(d) FEIN or other tax reporting number;~~
- ~~(e) Type of business;~~
- ~~(f) Physical address for Oregon principal place of business;~~
- ~~(g) Assumed business names;~~
- ~~(h) Name of workers' compensation insurer (or "self insured") and policy number;~~
- ~~(i) Names and contact information of the representatives at the Oregon locations;~~
- ~~(j) List of controlling persons, and in the case of privately held entities all owners, including their names, titles, residence addresses, telephone numbers, email addresses, and dates of birth;~~
- ~~(k) For a person applying for an initial license, a list of all states where the person operates as a leasing company or professional employer organization (PEO), copies of licenses, registrations, recognitions, or certifications from states that require those actions, and a verifiable statement that the remaining states of operation, if any, do not require licensure, registration, recognition, or certification to provide worker leasing or PEO services;~~
- ~~(l) Verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 2466;~~
- ~~(m) A record of any present or prior experience of providing workers by contract and for a fee in any state, by the person or any controlling person, and an explanation of that experience;~~
- ~~(n) A record of any bankruptcies, liens, or any actions involving or demonstrating dishonesty or misrepresentation, including but not limited to: fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering, or securities, investments, or insurance violations on the part of the person or any controlling person. Records of such actions must include:

 - ~~(A) Charges, guilty pleas, or pleas of no contest;~~
 - ~~(B) Criminal convictions;~~
 - ~~(C) Lawsuits;~~
 - ~~(D) Judgments; or~~
 - ~~(E) Discharges or permitted resignations based on allegations of these actions.~~~~

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- ~~(o) Full details regarding any bankruptcy, liens, or action under subsection (n), including:~~
- ~~(A) The nature and dates of the actions;~~
 - ~~(B) Outcomes, sentences, and conditions imposed;~~
 - ~~(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and~~
 - ~~(D) The designation and license number for any actions against a license;~~
- ~~(p) Full details of any administrative actions against the person by a regulatory agency of any state regarding matters listed in subsection (n) or worker leasing activities;~~
- ~~(q) A plan of operation that demonstrates how the worker leasing company will meet the requirements of ORS chapter 654, The Oregon Safe Employment Act;~~
- ~~(r) A plan of operation that demonstrates how the worker leasing company will collect and report the information necessary to establish each client's separate experience rating to the insurer providing workers' compensation coverage for each client, or to the National Council on Compensation Insurance for a self-insured worker leasing company and~~
- ~~(s) A notarized signature of an authorized representative of the applicant.~~
- ~~(3) The director may request additional information to further clarify the information and documentation submitted with the application. Under ORS 656.850(2), no person may perform services as a worker leasing company in Oregon without first being licensed to do so.~~
- ~~(4) The director will review complete applications, and may conduct a background investigation of the person applying for a license, an owner, or any controlling person. Information learned through a background investigation, or other information submitted during the application process, may be the basis for the director to refuse to issue or renew a license, or to disqualify the person from making further application.~~
- ~~(5) If the application is approved, the director will issue a license. Each license issued under these rules will automatically expire two years after the date of issuance unless renewed by the licensee. To renew a license, the worker leasing company must submit a renewal application to the director at least 90 days before the expiration of the current worker leasing license. Any supplemental material, whether requested by the director or submitted by the worker leasing company to establish a complete application, must be received by the director at least 45 days before expiration of the current license.~~
- ~~(6) The director may refuse to issue or renew a license or may disqualify a person, controlling person, or worker leasing company from applying for a license in the future for misrepresentation, failure to meet any of the requirements of ORS 656.850, 656.855, or these rules, or for reasons including, but not limited to:~~
- ~~(a) Denial of a previous application for, or prior suspension or revocation of, a worker leasing license by the director;~~

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~~(b) Denial, suspension, or revocation of a license, registration, or certification, or other discipline by any governmental agency or entity;~~

~~(c) Having exercised authority, control, or decision-making responsibility concerning any worker leasing company at the time that company had its authorization to provide worker leasing services denied, suspended, revoked, or restricted;~~

~~(d) Having been the subject of an order, adverse to the person, controlling person, or worker leasing company, by any governmental agency or entity in connection with any worker leasing activity;~~

~~(e) Having been found by any governmental agency or entity to have made a false or misleading statement, material misrepresentation, or material omission, or to have failed to disclose material facts;~~

~~(f) Violations of worker leasing statutes or regulations;~~

~~(g) Failure to establish minimum experience, training, or education that demonstrates competency in providing worker leasing services;~~

~~(h) Having been the subject of a complaint, investigation, or proceeding related to an action in subsection (2)(n) of this rule;~~

~~(i) Having been charged with, convicted of, or pleaded guilty or no contest to any felony or misdemeanor specified in subsection (2)(n) of this rule; or~~

~~(j) Having failed to provide documents the director has requested.~~

~~(7) "Disqualification," as used in this rule, means a person or a prospective worker leasing company may reapply no sooner than two years from the disqualification date.~~

~~(8) A disqualification may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person, owner, or controlling person.~~

~~(9) A person may appeal the director's refusal to approve and issue or renew a license, or a disqualification, under this rule as provided in OAR 436-050-0008 and OAR 436-001.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0450 Recordkeeping and Reporting Requirements

~~(1) Every licensed worker leasing company must give notice to the director of one Oregon location where Oregon leasing records are kept and made available for review by the director. The notice must include the physical address, mailing address, telephone number, and any other contact information in this state.~~

~~(2) Every licensed worker leasing company must have at least one representative of the worker leasing company at the Oregon location authorized to respond to inquiries and make records available by the date specified in the director's request or demand for information regarding leasing arrangements and client contracts.~~

~~(3) The following records must be kept and made available for review at the Oregon location:~~

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Proposed EMPLOYER/INSURER COVERAGE RESPONSIBILITY

- ~~(a) Copies of signed worker leasing notices for the most recent three years;~~
- ~~(b) Copies of signed notices of termination of leasing arrangements for the most recent three years;~~
- ~~(c) Copies of signed contracts between the worker leasing company and clients for the most recent three years; and~~
- ~~(d) Payroll records for the most recent seven years for all workers that identify leased workers subject to coverage by the worker leasing company; leased workers not subject to coverage by the worker leasing company; and, written records for all regular and temporary employees of the worker leasing company.~~

~~(4) The worker leasing company must notify the director within 30 days of the effective date of a change in any items listed in OAR 436-050-0440(2).~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0455 Reporting Requirements of a Self-Insured Worker Leasing Company

~~(1) A self-insured worker leasing company must maintain and report to the National Council on Compensation Insurance separate statistical data for each client whose coverage is provided by the self-insured employer. Reporting must be according to the uniform statistical plan prescribed by the director according to ORS 737.225(4).~~

~~(2) Records relating to the client statistical data for self-insured worker leasing companies must be made available for review by the National Council on Compensation Insurance upon request.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855
Statutes implemented: ORS 656.850 and 656.855
Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0460 Suspension or Revocation of License

~~(1) Reasons for suspension or revocation of a worker leasing license include, but are not limited to:~~

- ~~(a) Insolvency, whether the worker leasing company's liabilities exceed their assets or the worker leasing company cannot meet its financial obligations;~~
- ~~(b) Judgments against or convictions, within the last ten years, of any worker leasing company or controlling person for the reasons identified in OAR 436-050-0440(2)(n);~~
- ~~(c) Administrative actions involving worker leasing activities resulting from failure to comply with the requirements of any state;~~
- ~~(d) Nonpayment of taxes, fees, assessments, or any other moneys due the State of Oregon;~~
- ~~(e) If the worker leasing company or controlling person has failed to comply with any provisions of ORS chapters 654, 656, 659, 659A, 731 or 737; or any provisions of these rules; or~~

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~~(f) If the worker leasing company or controlling person is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker leasing business.~~

~~(2) For the purposes of this rule:~~

~~(a) "Suspension" means a stopping by the director of the worker leasing company's or controlling person's authority to provide leased workers to clients for a specified period of time. A suspension may be in effect for a period of up to two years. When the suspension expires, the worker leasing company or controlling person may petition the director to resume its worker leasing company activities.~~

~~(b) "Revocation" means a permanent stopping by the director of the worker leasing company's or controlling person's authority to provide leased workers to clients. After a revocation has been in effect for five years or longer, the worker leasing company or controlling person may reapply for license.~~

~~(c) "Show cause hearing" means an informal meeting with the director in which the worker leasing company will be provided an opportunity to be heard and present evidence regarding any proposed actions by the director to suspend or revoke a worker leasing company's authority to provide leased workers to clients.~~

~~(3) The director may revoke a license upon discovery of a misrepresentation in the information submitted in the worker leasing application.~~

~~(4) Suspension or revocation under this rule will not be made until the worker leasing company has been given notice and the opportunity to be heard through a show cause hearing before the director and "show cause" why it should be permitted to continue to be licensed as a worker leasing company.~~

~~(5) A show cause hearing may be held at any time the director finds that a worker leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.~~

~~(6) Appeal of proposed and final orders of suspension or revocation issued under this rule may be made as provided in OAR 436-050-0008 and OAR 436-001.~~

~~(7) Notwithstanding section (4) of this rule, the director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker leasing company fails to maintain workers' compensation coverage; or if the director finds there is a serious danger to public health or safety.~~

~~(8) A suspension or revocation may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

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Proposed EMPLOYER/INSURER COVERAGE RESPONSIBILITY

436-050-0470 Monitoring/Auditing

- ~~(1) The director will monitor and conduct periodic audits of employers as necessary to ensure compliance with the worker leasing company licensing and performance requirements.~~
- ~~(2) All pertinent records of the worker leasing company required by these rules must be disclosed upon request of the director.~~
- ~~(3) Under ORS 656.726 and 656.758, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers must provide the director with all pertinent books, records and payrolls upon request.~~
- ~~(4) For the purposes of this rule, both the worker leasing company and its clients will be considered employers.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)

436-050-0480 Assessment of Civil Penalties

- ~~(1) Failure to provide timely notice to the director for proof of coverage and cancellation of workers' compensation insurance policies under ORS 656.419 or OAR 436-162, or failure to provide timely worker leasing notice to the director under ORS 656.850(5) and OAR 436-050-0410, may result in civil penalties under ORS 656.745.~~
- ~~(2) The director may assess a civil penalty under ORS 656.745 against an employer who fails to respond to requests for information or fails to meet the requirements of 436-050-0470. Assessment of a penalty does not relieve the employer of the obligation to provide a response.~~
- ~~(3) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty under ORS 656.745.~~
- ~~(4) An employer who is found to be operating a worker leasing company without having obtained a license or after having failed to renew a license, or who continues to operate in Oregon as a worker leasing company after a prior Oregon license expired, may be assessed a civil penalty for each violation under ORS 656.745.~~
- ~~(5) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month for each client in which an employer provides leased workers to a client without having first obtained a worker leasing license.~~
- ~~(6) An employer obtaining workers by contract and for a fee from an unlicensed worker leasing company on a non-temporary basis may be subject to penalties under ORS 656.745. Upon a subsequent or continuing violation where written notice of such violation has been served, penalties under ORS 656.745 will be assessed against the employer.~~
- ~~(7) Any person or controlling person may also be subject to penalties under ORS 656.990.~~

Statutory authority: ORS 656.726(4), 656.850 and 656.855;

Statutes implemented: ORS 656.850 and 656.855

Hist: [Repealed xx/xx/xx as WCD Admin. Order 18-XXX, eff. xx/xx/xx](#)



Employer/Insurer Coverage Responsibility
Worker Leasing
Oregon Administrative Rules
Chapter 436, Division ~~050~~180

Proposed

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NOTE: These rules are being adopted as new division 180 of OAR chapter 436. Current rules governing worker leasing are in OAR 436-050. We are presenting these proposed rules showing marked revisions from 436-050. Please note that division 050 will still include rules 0003, 0005, and 0008, but that rules 0400 through 0480 will be repealed.

HISTORY LINES: These rules include only the most recent “History” lines. The history line shows when the rule was last revised and its effective date. To obtain a comprehensive history for OAR chapter 436, please call the Workers’ Compensation Division, 503-947-7627, or visit the division’s website:
http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf.

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 050180

GENERAL PROVISIONS

436-~~050180~~-0003 Applicability and Purpose Administration of these Rules

(1) Purpose.

These rules carry out ~~the workers' compensation law~~ ORS 656.850 and 656.855 related to ~~employers' and insurers' responsibilities to cover subject workers for compensable injuries and illnesses.~~

(2) Applicability.

~~The requirements of OAR 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-0190, 436-050-0200, 436-050-0205, 436-050-0210 and 436-050-0220 apply to both self-insured employers and self-insured employer groups. References in those rules to "employer" include employer groups, and references to "self-insured employer" include self-insured employer groups.~~

(~~3~~) Director's discretion.

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

Statutory authority: ORS 656.726(4) and 656.855)
Statutes implemented: ORS ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850 and, 656.855, and 731.475
Hist: Amended 12/24/15 as WCD Admin. Order 15-067, eff. 1/1/16
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-~~050180~~-0005 Definitions

Unless a term is defined elsewhere in these rules, the definitions of ORS ~~chapter 656.005 and 656.850~~ are incorporated by reference and made a part of these rules. For the purpose of these rules, unless the context requires otherwise:

(1) ~~"Assigned claims agent" means an entity selected by the director to process the claims of a non-complying employer under ORS 656.054.~~

(2) ~~"Audited financial statement" means a financial statement audited by an outside accounting firm.~~

(3) ~~"Cancel" or "cancellation" in relation to an insurance policy means ending the policy at a date before its expiration date.~~

(4) ~~"Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis. Client does not include a person that shares common majority ownership with the person providing workers under contract and for a fee.~~

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(2) "Common majority ownership" means the same person or group of persons owns more than 50 percent of each entity. If an entity owns a majority interest in another entity, which in turn owns a majority interest in another entity, all entities so related are considered to share common majority interest.

(53) "Controlling person" means:

(a-) aA person ~~having substantial ownership or~~ who holds an ownership interest greater than or equal to the lesser of:

(A) The average ownership interest of all owners; or

(B) 10 percent;

(b) A person who is an officer or director of a corporation; a member or manager of a limited liability company; a partner of a partnership; or

(c) ~~an~~An individual who has, ~~directly or indirectly,~~ the power to direct or cause the direction of the management, policies, or operation of a ~~person offering~~ worker leasing services~~company~~.

(4) "Coverage" means assurance that subject workers and their beneficiaries will receive compensation for compensable injuries as provided for under ORS chapter 656 through a workers' compensation insurance policy or by a self-insured employer.

(65) "Days" means calendar days unless otherwise specified.

(7) "Default" means ~~failure of an employer, insurer, or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612, and 656.614 at such intervals as the director directs.~~

(86) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(7) "Federal Employer Identification Number" or "FEIN" means the reporting number used by the Internal Revenue Service (IRS) to identify a business entity for federal tax reporting purposes. "FEIN" does not include a Social Security Number or other reporting number used to identify an individual.

(9) "Governmental subdivision" means ~~cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456, or regional council of governments created under ORS chapter 190.~~

(108) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(11) "Insurer" means ~~the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon.~~

(129) "Leased worker" means any worker provided by a worker leasing company to a client on other than a "temporary basis" as described in OAR 436-~~050180-04290120~~.

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(10) "License" means an Oregon worker leasing license issued by the department under ORS 656.855.

~~(13) "Nonrenewal" means the insurer's decision not to renew a policy at its expiration date.~~

~~(1411) "Person" means an individual, partnership, corporation, joint venture, limited liability company, association, government agency, sole proprietorship, or other business entity allowed to do business in the state of Oregon.~~

~~(15) "Premium" means the monetary consideration for an insurance policy.~~

~~(16) "Premium assessments" means moneys due the director under ORS 656.612 and 656.614.~~

~~(17) "Process claims" is the determination of compensability and management of compensation by an Oregon certified claims examiner.~~

~~(1812) "Proof of coverage" has the same meaning as defined in OAR 436-162-0005.~~

~~(19) "Reinstatement" means the continuation or reestablishing of workers' compensation insurance coverage, as noted by the effective date of the reinstatement, under a workers' compensation insurance policy that was previously canceled.~~

~~(20) "Renewal" or "renew" means the issuance of a policy succeeding a previously issued policy or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.~~

~~(21) "Self insured employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self insured employer set out by ORS 656.407.~~

~~(22) "Self insured employer group" means five or more employers certified under ORS 656.430 as having met the qualifications of a self insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.~~

~~(23) "Service company" means the contracted agent for an insurer, self insured employer, or self insured employer group authorized to process claims and make payment of compensation on behalf of the insurer, self insured employer, or self insured employer group.~~

~~(24) "State" means the State of Oregon.~~

~~(25) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all the owners, or ten percent, whichever is less.~~

~~(2613) "Worker leasing company" means a "person," as described in section (14) of this rule, who that provides workers to a client, by contract and for a fee, ~~as established in ORS 656.850~~ but does not include a person who provides workers to a client on a temporary basis. For the purposes of these rules, a professional employer organization (PEO) is considered to be a worker leasing company.~~

(14) "Worker leasing contract" means the written agreement between a worker leasing company and a client that establishes the terms for the provision of leased workers. The

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effective date of a worker leasing contract is the first date an Oregon subject worker is provided to a client.

(2715) "Written" means information communicated in writing, and includes electronic records.

Statutory authority: ORS 656.726(4)
Statutes implemented: ORS 656.726(4)
Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050180-0008 Requests for Hearings or Administrative Review

~~(1) Request for hearing on an action concerning a worker's right to compensation.~~

~~Any party, or assigned claims agent, that disagrees with an action taken under these rules that concerns a worker's right to compensation, or the amount of compensation due, may request a hearing by the Hearings Division under ORS chapter 656 and OAR chapter 438.~~

~~(2) Request for hearing on proposed sanctions or civil penalties.~~

~~Any person party, or assigned claims agent, that disagrees with a proposed order, or proposed assessment of a civil penalty, of the director issued under ORS ~~656.254~~, 656.735, 656.745, or 656.750 may request a hearing by the Hearings Division. To request a hearing, the party or assigned claims agent person must:~~

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

~~(3) Request for administrative review.~~

~~Any party, or assigned claims agent, that disagrees with an action taken under these rules other than as described in section (1) of this rule may request the director to conduct an administrative review of the action:~~

- ~~(a) To request administrative review, the party or assigned claims agent must:

 - ~~(A) Mail or deliver a written request for review to the Workers' Compensation Division within 90 days of the contested action; and~~
 - ~~(B) Specify, in the request, the reasons why the party or assigned claims agent disagrees with the action.~~~~
- ~~(b) Requests mailed more than 90 days after the contested action may be considered if the director determines there was good cause for delay, or that substantial injustice may otherwise result.~~

~~(4) Request for hearing on an action or order of the director not concerning a worker's right to compensation~~

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Any ~~party, or assigned claims agent, person~~ that disagrees with an action or order of the director under these rules other than as described in section (1) ~~or (2)~~ of this rule may request a hearing ~~by filing a request~~ under OAR 436-001-0019, subject to the following:

(a) The request for hearing must be made in writing and must be filed:

(A) Within 60 days of the mailing date of an order denying an application for initial or renewal license;

(B) Within 90 days of an emergency suspension order suspending a license under OAR 436-180-0160(3); or

(C) Wwithin 30 days of the mailing date of ~~the any other~~ order or notice of action; and-

(b) OAR 436-001 applies to the hearing.

Statutory authority: ORS 656.704, 656.726(4), and 656.745

Statutes implemented: ORS ~~656.254~~, 656.704, ~~656.735~~, 656.740, 656.745, and 656.750

Hist: Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

~~WORKER LEASING COMPANIES~~

436-050180-04000100 **Responsibility for Providing Coverage under a Lease Arrangement**

(1) General.

Every worker leasing company providing workers to a client must satisfy the requirements of ORS 656.017, and 656.407, ~~or 656.419.~~

(2) Worker leasing company coverage of a client's subject and leased workers.

~~Except when the client provides coverage as described in section (3) of this rule, when a worker leasing company provides workers to a client, Every~~the worker leasing company ~~providing leased workers to a client~~ must also provide workers' compensation insurance coverage for the leased workers and any subject workers of the client. ~~;~~

(3) Client coverage of subject and leased workers.

~~unless~~When during the term of the worker leasing contract, the director has ~~client has an active workers' compensation insurance policy~~ proof of coverage for a client-purchased policy on file, ~~with the director or when the client~~ is certified under ORS 656.430 as a self-insured employer.;

(a) ~~In the latter circumstance, t~~The client's insurer or the self-insured employer coverage extends ~~will be deemed to provide insurance coverage for~~to all leased workers and subject workers ~~of employed by the client;~~ and

~~(3)~~(b) The client will be considered a noncomplying employer ~~If an insured client if it allows its coverage to terminate workers' compensation insurance policy to cancel or does not obtain a renewal of the policy, or if a self-insured client allows its certification to terminate, and the client~~ and continues to lease or employ subject workers, unless the client obtains new coverage or ~~or has leased workers, the client will be considered a noncomplying employer unless~~ the worker leasing company has made the filing notified the director that it provides coverage for the client ~~with the director~~ under OAR 436-050180-04100110(1).

(4) Leasing from more than one worker leasing company.

A client ~~can~~ ~~can obtain~~ may not leased workers from only more than one worker leasing company at a time unless the client provides coverage for the leased workers and any subject workers employed by the client under section (3) of this rule. ~~has an active workers' compensation insurance policy proof of coverage on file with the director or is certified under ORS 656.430 as a self-insured employer.~~

(5) Providing coverage to another worker leasing company.

A worker leasing company ~~must~~ may not provide ~~workers' compensation~~ coverage for another worker leasing company doing business in Oregon or any other state, whether or not any of the worker leasing companies involved is licensed for worker leasing in Oregon. This section does not apply when:

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(a) Two or more worker leasing companies that share common majority ownership are included as named insureds on a single policy; and

(b) Each worker leasing company separately meets the requirements of ORS 737.270(4).

(6) Leasing from unlicensed worker leasing company.

~~A client employer~~ No person may ~~not~~ obtain workers by contract and for a fee on a non-temporary basis from an unlicensed worker leasing company.

Statutory authority: ORS 656.726(4) ~~, 656.850 and 656.855~~

Statutes implemented: ORS 656.850 ~~and 656.855~~

Hist: Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

436-050-0410180-0110 **Notice to Director of Lease Arrangement Client Coverage; Changes to Coverage Information; Termination; Reinstatements**

(1) Notice of client coverage.

~~Within 14 days after the effective date of the lease arrangement or contract, a~~ When a worker leasing company provides coverage to a client under OAR 436-180-0100(2), the worker leasing company must file written notice with the director and its insurer, using Form 2465, "Worker Leasing Notice ~~to the Department of Consumer and Business Services,~~" that it is providing leased workers to a client and workers' compensation coverage, subject to the following:

(a) Form 2465 must be filed within 30 days after the effective date of the worker leasing contract; and

(b) The ~~notice~~ Form 2465 must be correct, and complete, signed by an authorized representative of the worker leasing company, and must include:

(aA) The client's:

(Ai) Legal name and assumed business names, if any;

(Bii) FEIN ~~or other tax reporting number;~~

(Ciii) Type of ownership;

(Div) ~~Primary nature of business~~ North American Industry Classification System Code;

(v) Governing class code or National Council on Compensation Insurance (NCCI) code;

(Evi) Phone number, email address, and ~~M~~ mailing address;

and

(viiF) Street address ~~in~~ of Oregon location; and

(bB) The worker leasing company's:

(Ai) Legal name and assumed business names, if any;

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- (Bii) Mailing address;
- (Ciii) FEIN ~~or other tax reporting number~~;
- (Div) ~~WCD Oregon~~ worker leasing license number, ~~if any~~;
- (E) ~~Workers' compensation insurer's name (or "self-insured")~~;
- (Fv) Effective date of ~~leasing contract~~ Oregon client coverage; and
- (Gvi) Contact name, ~~and~~ phone number, ~~and~~ email address; ~~and~~
- (H) ~~A signature of a representative of the worker leasing company.~~

(2) Changes or corrections to client coverage information.

A worker leasing company must notify the director and its insurer of changes or corrections to information provided under section (1) of this rule using Form 3270, "Worker Leasing Update Notice" within 30 days after the effective date of a change, or knowledge a correction is needed.

(23) Termination of client coverage.

A worker leasing company may terminate its obligation to provide ~~workers' compensation coverage to a client by giving~~ providing prior written notice of the termination to its insurer, its client, and the director ~~written notice of the termination.~~, subject to the following:

(a) ~~A~~ The notice of termination must state:

(A) ~~†~~ The effective date and hour of the termination;

(B) The reason for the termination;

(C) The client's:

(i) Legal name and assumed business names, if any;

(ii) FEIN;

(iii) Phone number, email address, and mailing address; and

(D) The name, phone number, and signature of an authorized representative of the worker leasing company;

(b) The notice must be sent to the client's last-known address by U.S. mail before the effective date of the termination, and copied to the worker leasing company's insurer and the director;

(c) The worker leasing company may use Form 3271, "Worker Leasing Termination Notice" to satisfy the requirements of this section; and

(d) ~~but †~~ Regardless of the effective date in the notices provided under this section, the termination will not be effective until at least not less than the 30th days after the notice under section (a) is received by the director. Notice to the client under this section must be given by mail, addressed to the client at its last known address.

(4) Reinstatement of client coverage.

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When a worker leasing company reinstates coverage to a client following a termination under section (3) of this rule, the worker leasing company must notify the director using Form 5361, "Worker Leasing Reinstatement Notice," subject to the following:

- (a) The form must be filed within 30 days after the reinstatement becomes necessary; and
- (b) The form must be correct, complete, signed by an authorized representative of the worker leasing company, and must include:

(A) The client's:

- (i) Legal name and assumed business names, if any;
- (ii) FEIN;
- (iii) Phone number, and
- (iv) Email address, if known;

(B) The worker leasing company's:

- (i) Legal name and assumed business names, if any;
- (ii) FEIN;
- (iii) Oregon worker leasing license number; and
- (iv) Contact name and phone number.

Statutory authority: ORS 656.726(4), ~~656.850~~ and ~~656.855~~

Statutes implemented: ORS 656.850 and ~~656.855~~

Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

436-~~050180-04200120~~ Temporary Worker Distinguished from Leased Worker

(1) Temporary service providers.

A person that provides a worker to a client by contract and for a fee will be considered a temporary service provider if the worker is provided on a temporary basis, subject to the following:

(a) "Temporary basis" means the worker was provided to supplement a client's regular workforce for a special situation, as a student worker, or as a probationary hire as described under ORS 656.850(1)(b). ~~A person who provides a~~ The worker to work for a client will be considered to be ~~providing~~ provided the worker on a "temporary basis" only if there is contemporaneous written documentation of the placement; that indicates the duration of the work to be performed and that the worker is provided for a client's special situation under ORS 656.850(1)(b).

(b) "Contemporaneous written documentation" means documents that are created at the time the temporary service provider and ~~the~~ client ~~employer~~ make the arrangements for placement of the worker. ~~Upon the director's request, the documentation must be provided to the director by either the temporary service provider or the client.~~

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~~Contemporaneous documentation in support of workers being provided on a temporary basis~~ The documents must indicate the expected duration of the placement, and:

(A) If the worker was provided to supplement a client's regular workforce for a special situation, the documentation must describe the special situation that requires supplementation of the client's regular workforce. A special situation includes, but is not limited to one or more of the following conditions:

(ai) ~~To cover~~ An employee absences or employee-leaves, from which the employee is expected to return including but not limited to such things as maternity leave, vacation, jury duty, or illness from which the permanent worker will return to work;

(bij) ~~To fill a~~ professional skill shortage in skilled professional staff, including but not limited to, professionals such as engineers, architects, electricians, plumbers, pharmacists, nurses, or other professions, whether licensed or not, to supplement or satisfy a shortage of that skill for a known duration of time. Supporting documentation may include license information, and must establish whether the worker is provided to supplementing or to satisfying a client's employer's need for the skill;

(eiii) ~~To staff a~~ seasonal or sporadic increase in workload, indicated by a temporary increase in demand upon an employer's normal workload that requires additional assistance in addition to the client's regular workforce to meet the demand. When the increased demand ends, the additional positions are eliminated. Documentation must include what constitutes the demand establishing the nature of the increase in workload and why the additional assistance is needed this special situation is beyond the norm; or

(div) ~~To staff a~~ special assignment or project outside of the routine activities of the business where the worker will be terminated or assigned to another temporary project upon completion. ~~For example, a construction contractor may need assistance on a construction site to help clear branches and other debris after a windstorm so the regular construction crew can continue its work.~~

Documentation must describe the project and why it is unusual;

(eB) ~~To hire a student worker that will be~~ If the worker is provided and paid by a school district or community college through a work experience program, ~~Documentation must include~~ the name of the school or institution and the work experience program; or

(fC) ~~To cover special situations~~ If the worker is provided as a probationary new hire where and the worker has a reasonable expectation of transitioning to permanent employment with the client ~~employer, and the evidence that the client employer uses a pre-~~ established a probationary period in its overall employment selection program before obtaining workers from the person. Documentation must Evidence may include copies of the client's ~~employer's~~ written program or a written agreement between the temporary service provider and the client establishing the probationary period before workers are provided; and

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~~other evidence supporting the pre-established probationary period and overall employment selection program.~~

~~(2)(c) Either the person providing the worker or the client must provide the contemporaneous written documentation to the director upon request. If a person fails to provide the contemporaneous written documentation, the director may determine provides workers, by contract and for a fee, to work for a client and any such the workers are is not provided on a "temporary basis," and that person will be considered a worker leasing company.~~

(32) Persons providing leased and temporary workers.

~~If a person provides both leased workers and providing workers on both a leased and a temporary basis does not maintain the records required by OAR 436-180-0150(2), that person must maintain written records that show specifically which workers are provided on a temporary basis. If the written records do not specify which workers are provided on a temporary basis, all workers are deemed will be considered to be leased workers.~~

Statutory authority: ORS 656.726(4), ~~656.850 and 656.855~~

Statutes implemented: ORS 656.850 ~~and 656.855~~

Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

436-050180-04400140 **Qualifications, Applications, and Renewals for License as a Worker Leasing Company**

(1) Prohibition against leasing workers without a license.

~~No person may perform services as a worker leasing company in Oregon without a valid license.~~

(12) Qualification for license.

~~Each person applying for To qualify for an initial license or renewal as a worker leasing company, a person must:~~

- ~~(a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division to conduct business in this state Be registered and authorized to do business in Oregon under ORS chapter 58, 60, 62, 63, 65, 67, 70, or 648, as applicable, or be a municipal or public corporation as defined in ORS 297.405;~~
- ~~(b) Maintain workers' compensation coverage under ORS 656.017; and~~
- ~~(c) Submit a complete application under this rule and be approved for licensure; and~~
- ~~(d) Upon application approval and before licensure, pay the required licensing fee of \$2,050.~~

(23) Application for full leasing license.

~~Except as described in section (4) of this rule, Each person applying applicant for an initial license or renewal as a worker leasing company must submit a completed Form 2466,~~

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“~~Application for Oregon~~ Worker Leasing License Application.” The form and accompanying documentation must include:

(a) Complete information for the applicant, including:

- ~~(aA)~~ Legal and assumed business names;
- ~~(bB)~~ Mailing address;
- ~~(cC)~~ In state and out of state phone numbers;
- ~~(dD)~~ FEIN or other tax reporting number;
- ~~(e)~~ Type of business;
- ~~(fE)~~ Physical address for Oregon of the principal place of business;
- ~~(g)~~ Assumed business names;
- ~~(h)~~ Name of workers' compensation insurer (or "self insured") and policy number;
- ~~(iF)~~ Names and contact information, including a phone number and valid email address, for at least of the two representatives at the Oregon locations who are authorized to respond to inquiries about licensing, leasing, and coverage;
- ~~(j)~~ List of controlling persons, and in the case of privately held entities all owners, including their names, titles, residence addresses, telephone numbers, email addresses, and dates of birth;
- ~~(kG)~~ For a person applying for an initial license, a list A disclosure of all states where the person applicant operates as a worker leasing company or professional employer organization (PEO), including -copies identification numbers and expiration dates of any licenses, registrations, recognitions, or certifications and disclosure of any that are not in good standing; from states that require those actions, and a verifiable statement that the remaining states of operation, if any, do not require licensure, registration, recognition, or certification to provide worker leasing or PEO services;
- ~~(H)~~ Signed releases for Verification verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 2466;
- (I) Written procedures that demonstrate how the applicant will ensure its clients provide adequate training, supervision, and instruction to meet the requirements of ORS chapter 654;
- ~~(mJ)~~ A record description of any present or prior experience of providing workers by contract and for a fee in any state, by the person applicant or any controlling person; and an explanation of that experience;
- ~~(nK)~~ A record of any bankruptcies, liens, default, or insolvency, including full details of the:

(i) Nature and dates of the actions;

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(ii) Outcomes, and conditions imposed, including but not limited to: administrative orders, lawsuits, judgments, and discharges or permitted resignations;

(iii) Name and location of the court or jurisdiction, case names and numbers, and dates of any proceedings were held or are pending; and

(iv) Identification numbers of any licenses, registrations, recognitions, or certifications affected by the actions; or

(L) A record of any civil or criminal actions involving or demonstrating dishonesty or misrepresentation, including but not limited to: fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering; or securities, investments, or insurance violations on the part of the person-applicant or any controlling person. Records of such actions must include full details of:

(i) The nature and dates of the actions;

(ii) Outcomes, sentences, and conditions imposed, including but not limited to administrative orders, charges, guilty pleas, pleas of no contest, criminal convictions, lawsuits, judgements, and discharges or permitted resignations;

(iii) Name and location of the court or jurisdiction, case numbers, and dates of any past, current, or pending proceedings; and

(iv) Identification numbers of any licenses, registrations, recognitions, or certifications affected by the actions;

~~(A) Charges, guilty pleas, or pleas of no contest;~~

~~(B) Criminal convictions;~~

~~(C) Lawsuits;~~

~~(D) Judgments; or~~

~~(E) Discharges or permitted resignations based on allegations of these actions.~~

~~(e) Full details regarding any bankruptcy, liens, or action under subsection (n), including:~~

~~(A) The nature and dates of the actions;~~

~~(B) Outcomes, sentences, and conditions imposed;~~

~~(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and~~

~~(D) The designation and license number for any actions against a license;~~

~~(pM) Full details~~A record of any administrative, civil, or criminal actions against the person-applicant by a regulatory agency of any state regarding ~~matters listed in subsection (n) or~~ worker leasing activities. Records must include full details of:

(i) The nature and dates of the actions;

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(ii) Outcomes, sentences, and conditions imposed, including but not limited to administrative orders, charges, guilty pleas, pleas of no contest, criminal convictions, lawsuits, judgements, and discharges or permitted resignations;

(iii) Name and location of the court or jurisdiction, case names and numbers, and dates of any proceedings were held or are pending; and

(iv) Identification numbers of any licenses, registrations, recognitions, or certifications affected by the actions;

~~(q) A plan of operation that demonstrates how the worker leasing company will meet the requirements of ORS chapter 654, The Oregon Safe Employment Act;~~

~~(r) A plan of operation that demonstrates how the worker leasing company will collect and report the information necessary to establish each client's separate experience rating to the insurer providing workers' compensation coverage for each client, or to the National Council on Compensation Insurance for a self-insured worker leasing company and~~

(b) Complete information for each controlling person, including:

(A) Full name, position, and date of birth;

(B) Any other names used;

(C) Residence, mailing, and business address;

(D) Phone number;

(E) Email address;

(F) The information required under paragraphs (3)(a)(J) through (M) of this rule;

~~(c) (s) A notarized signature affidavit from of an authorized representative of the applicant and a statement from each controlling person verifying the information provided is complete and truthful, and that there is no omission of material fact; and-~~

(d) Any additional information requested by the director.

~~(3) The director may request additional information to further clarify the information and documentation submitted with the application. **Under ORS 656.850(2), no person may perform services as a worker leasing company in Oregon without first being licensed to do so.**~~

(4) Application for limited leasing license.

Notwithstanding section (3) of this rule, a person may apply for a limited leasing license by submitting Form 5362, "Worker Leasing License Application - Limited."

(a) To qualify for a limited license, the person must:

(A) Be licensed or certified in a state that the director has determined has requirements substantially similar to the requirements of these rules;

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(B) Have no more than:

(i) Two Oregon clients; and

(ii) Five or fewer leased workers, in total;

(C) Be domiciled in a state other than Oregon;

(D) Not maintain an Oregon location; and

(E) Not directly solicit clients located or domiciled in Oregon;

(b) The application and accompanying documentation must include:

(A) The information required under paragraphs (3)(a)(A) through (I) of this rule;

(B) A notarized signature of an authorized representative of the applicant; and

(C) Any additional information requested by the director;

(c) Upon approval of the application under section (5) of this rule, the applicant must pay the required licensing fee of \$2,050; and

(d) After the license is issued, the licensee must submit a full application under section (3) of this rule within 30 days after the date it no longer qualifies for a limited license under subsection (a).

(45) Review of application.

The director will review complete applications, ~~and~~ Following receipt of all information required under section (3) or (4) of this rule:

(a) The director may request additional information to further clarify the information and documentation submitted with the application;

(b) The director may conduct a background investigation of the ~~person applying for a license applicant~~, an owner, or any controlling person. Information learned through a background investigation, or other information submitted during the application process, may be the basis for the director to refuse to issue or renew a license, or to disqualify the ~~person applicant or a controlling person~~ from making further application; ~~and~~

(5c) The director will notify the applicant of the decision to approve or deny the application in writing:

(A) If the application is denied, the notice will include the reason for the denial and how to appeal the decision; or

(B) If the application is approved, the director will issue a license upon receipt of the \$2,050 licensing fee under section (2)(d) of this rule.

(6) License renewal.

~~Each A~~ license ~~issued under these rules~~ will automatically expire two years after the date ~~of issuance~~ it was issued unless renewed by the licensee. To renew a license, the worker leasing company must:

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(a) If the license was applied for under section (3) of this rule, submit a complete a-Form 5364, "Worker Leasing License Renewal Application – Renewal" to the director at least 90 days before the expiration of the current worker leasing license-. The form and accompanying documentation must include:

(A) The information required under paragraphs (3)(a)(A) through (I) of this rule;

(B) Disclosure of any information required under paragraphs (3)(a)(K) through (M) of this rule that has not been previously disclosed to the division;

(C) Complete information for each controlling person, including:

(i) Full name, position, and date of birth;

(ii) Any other names used;

(iii) Residence, mailing, and business address;

(iv) Phone number;

(v) Email address; and

(vi) Disclosure of any information required under paragraphs (L) through (M) of this rule that has not been previously disclosed to the director;

(D) A notarized affidavit from an authorized representative of the applicant and a statement from each controlling person verifying the information provided is complete and truthful, and that there is no omission of material fact; or

(b) If the license was applied for under section (4) of this rule, submit a complete Form 5362, "Worker Leasing License Application – Limited" as described under subsection (4)(b) of this rule; and

(c) Submit Aany supplemental material necessary to establish a complete application, including any information whether requested by the director, or submitted by the worker leasing company to establish a complete application, must be received by the director at least 45 days before expiration of the current license.; and

(d) Upon application approval, pay the required licensing fee of \$2,050.

(7) Changes and corrections to application information.

The worker leasing company must notify the director in writing of any changes or corrections to information provided in any application approved under this rule within 30 days of the effective date of a change or knowledge of incorrect information.

(8) Electronic submission of application materials.

Notwithstanding any other section of this rule, with the director's prior authorization, an applicant may submit application materials electronically using the appropriate application form or an electronic equivalent that contains all of the information required by this rule.

(9) Denial of application.

The director may refuse to issuedeny an application for initial license -or renewal-a license or may disqualify a person, controlling person, or worker leasing company from applying for a

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~~license in the future~~ for misrepresentation~~;~~ failure to meet any of the requirements of ORS 656.850, 656.855, or these rules~~;~~ or for reasons including, but not limited to:

- (a) Denial of a previous application for, or prior suspension or revocation of, a worker leasing license by the director;
- (b) Denial, suspension, or revocation of a license, registration, or certification, or other disciplinary action by any governmental agency or entity;
- (c) Having exercised authority, control, or decision-making responsibility concerning any worker leasing company ~~at the~~during a time that company had its authorization to provide worker leasing services denied, suspended, revoked, or restricted;
- (d) Having been the subject of an order, adverse to the applicant ~~person, or~~ controlling person, ~~or worker leasing company,~~ by any governmental agency or entity in connection with any worker leasing activity;
- (e) Having been found by any governmental agency or entity to have made a false or misleading statement, material misrepresentation, or material omission, or to have failed to disclose material facts;
- (f) Violations of worker leasing statutes or regulations in any state;
- (g) Failure to establish minimum experience, training, or education that demonstrates competency in providing worker leasing services;
- (h) Nonpayment of taxes, fees, assessments, civil penalties, or any other moneys due the State of Oregon or another jurisdiction;
- ~~(hi)~~ Having been the subject of a complaint, investigation, or proceeding related to an action ~~in subsection (2)(n) of this rule;~~involving:
 - (A) Bankruptcy, liens, default, or insolvency of the applicant or any controlling person; or
 - (B) Dishonesty or misrepresentation, including but not limited to fraud, theft, burglary, embezzlement, deception, perjury, forgery, counterfeiting, bribery, extortion, money laundering; or violations involving securities, investments, or insurance violations on the part of the applicant or any controlling person;
- (~~ij~~) Having been ~~charged with,~~ convicted of, or pleaded guilty or no contest to, any felony or misdemeanor specified in ~~subsection paragraph (2)(n)(i) of this rule;~~ or
- (~~jk~~) Having failed to provide documents requested by the director ~~has requested.~~

(710) Disqualification.

The director may disqualify an applicant or controlling person from applying for a license in the future for any of the reasons listed under section (9) of this rule. If an applicant or controlling person is disqualified:

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~~(a) "Disqualification," as used in this rule, means a person or a prospective The worker leasing company applicant or controlling person may not reapply for a license for no sooner than at least two years from the disqualification date; and~~

~~(8b) A The disqualification may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person, owner, or controlling person.~~

(11) Appeal of denial or disqualification.

~~An applicant or controlling person may appeal at the director's refusal to approve and issue or renew a license, denial or a disqualification; under this rule as provided in OAR 436-050180-0008 and OAR 436-001.~~

Statutory authority: ORS 656.726(4), ~~656.850~~ and 656.855

Statutes implemented: ORS ~~656.850 and~~ 656.855

Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

436-050180-04500150 Recordkeeping and Reporting Requirements

~~(1) Every licensed worker leasing company must give notice to the director of one Oregon location where Oregon leasing records are kept and made available for review by the director. The notice must include the physical address, mailing address, telephone number, and any other contact information in this state.~~

~~(2) Every licensed worker leasing company must have at least one representative of the worker leasing company at the Oregon location authorized to respond to inquiries and make records available by the date specified in the director's request or demand for information regarding leasing arrangements and client contracts.~~

(31) Required records.

~~The A worker leasing company must maintain and make the following records must be kept and made available for review by the director, upon request: at the Oregon location:~~

~~(a) Copies of and documentation of filing for signed worker leasing notices for the most recent three years after the date the Oregon contract ended; and~~

~~(b) Copies of signed notices of termination of leasing arrangements for the most recent three years; forms and notices required under OAR 436-180-0110. All forms and documentation must be maintained for three years after the date coverage provided to a client ends;~~

~~(eb) Copies of signed contracts between the worker leasing company and clients for the most recent for the three years after the termination date of the contract; and~~

~~(ec) Payroll records for the most recent seven years for all workers; and~~

~~(d) Records that identify the name, hire date, termination date, and client location for:~~

~~(A) All leased-leased workers subject to coverage by the worker leasing company;~~

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- ~~(B) Leased workers not subject to coverage by the worker leasing company; and~~
~~(C) All non-leased workers employed by the worker leasing company, including and written records for all regular administrative staff and workers provided to clients on a temporary basis. employees of the worker leasing company.~~
~~(4) The worker leasing company must notify the director within 30 days of the effective date of a change in any items listed in OAR 436-050-0440(2).~~

(2) Records of leased and temporary workers.

If a worker leasing company provides both leased workers and workers on a temporary basis, the worker leasing company must maintain written records that specify which workers are leased and which workers are provided on a temporary basis.

Statutory authority: ORS 656.726(4), ~~656.850~~ and 656.855
Statutes implemented: ORS ~~656.850 and~~ 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050180-04550155 **Reporting Requirements of a Self-Insured Worker Leasing Company**

(1) Reporting of client statistical data.

A self-insured worker leasing company must maintain and report to the National Council on Compensation Insurance (NCCI) separate statistical data for each client ~~whose the self-insured worker leasing company provides coverage is provided by the self-insured employer for under OAR 436-180-0100(2).~~ Reporting must be according to the uniform statistical plan prescribed by the director ~~under according to~~ ORS 737.225(4) and OAR 836-042-0045.

(2) Records relating to client statistical data.

Records relating to the client statistical data for self-insured worker leasing companies must be made available ~~for review by the National Council on Compensation Insurance to~~ NCCI, upon request.

Statutory authority: ORS 656.726(4), ~~656.850~~ and 656.855
Statutes implemented: ORS ~~656.850 and~~ 656.855
Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07
Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13
Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17
See also the Index to Rule History: http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

436-050180-04600160 **Suspension or Revocation of License**

(1) General.

The director may suspend or revoke ~~Reasons for suspension or revocation of~~ a worker leasing license ~~for reasons include~~ including, but ~~are~~ not limited to:

- (a) Insolvency or default, ~~whether if~~ the worker leasing company's liabilities exceed ~~their~~ its assets or the worker leasing company cannot meet its financial obligations;

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- (b) Judgments against or convictions, within the last ~~ten~~¹⁰ years, of any worker leasing company or controlling person for the reasons identified in OAR 436-~~050~~¹⁸⁰-~~04400140(2)(n)(9)(i)~~;
- (c) Administrative actions involving worker leasing activities resulting from failure to comply with the requirements of any state;
- (d) Nonpayment of taxes, fees, assessments, civil penalties, or any other moneys due the State of Oregon or another jurisdiction;
- (e) ~~If the~~^{The} worker leasing company or controlling person's ~~failure has failed~~ to comply with any provisions of ORS chapters 654, 656, 659, 659A, 731 or 737; or any provisions of these rules; ~~or~~
- (f) ~~If the~~^{The} worker leasing company or controlling person is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the worker leasing business; ~~;~~ or
- (g) Any of the reasons for denial of an application for initial license or renewal listed in OAR 436-180-0140(9).

(2) Show-cause hearing.

Except as described under section (3) of this rule, the director will not suspend or revoke a worker leasing license until the worker leasing company has been given notice and the opportunity to be heard through a show-cause hearing with the director.

- (a) During the show--cause hearing, the worker leasing company will be provided an opportunity to:
- (A) Present evidence regarding any proposed orders by the director to suspend or revoke the worker leasing company's license; and
 - (B) Give reason why the worker leasing company should be permitted to continue performing services as a worker leasing company.
- (b) A show-cause hearing may be held at any time the director finds that a worker leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.

(3) Emergency order of suspension or revocation.

Notwithstanding section (2) of this rule, the director may immediately:

- (a) Suspend a license by issuing an "emergency suspension order" if:
- (A) The worker leasing company fails to maintain coverage; or
 - (B) The director finds there is a serious danger to public health or safety; or
- (b) Revoke a license upon discovery of a misrepresentation in the information submitted in the worker leasing application.

(24) Suspension of license.

~~For the purposes of this rule~~If the director suspends a worker leasing license:

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~~(a) "Suspension" means a stopping by the director of the~~ The worker leasing company's and any or controlling person's authority ~~to may not provide leased~~ lease workers to clients for a specified period of time, up to two years; ~~A suspension may be in effect for a period of up to two years.~~

(b) The suspension may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person; and

(c) When the suspension expires, the worker leasing company or controlling person may petition the director to resume its worker leasing company activities, or apply to renew its worker leasing license under OAR 436-180-0140.

(b5) Revocation of license.

If the director revokes a worker leasing license:

~~(a) "Revocation" means a permanent stopping by the director of t~~ The worker leasing company's, and any or controlling person's authority ~~to may not provide~~ leased workers to clients for at least five years;

(b) The revocation may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person; and

(c) After a revocation has been in effect for five years or longer, the worker leasing company or controlling person may reapply for license under OAR 436-180-0140.

~~(e) "Show cause hearing" means an informal meeting with the director in which the worker leasing company will be provided an opportunity to be heard and present evidence regarding any proposed actions by the director to suspend or revoke a worker leasing company's authority to provide leased workers to clients.~~

~~(3) The director may revoke a license upon discovery of a misrepresentation in the information submitted in the worker leasing application.~~

~~(4) Suspension or revocation under this rule will not be made until the worker leasing company has been given notice and the opportunity to be heard through a show cause hearing before the director and "show cause" why it should be permitted to continue to be licensed as a worker leasing company.~~

~~(5) A show cause hearing may be held at any time the director finds that a worker leasing company has failed to comply with its obligations under a leasing contract or that it failed to comply with the rules or orders of the director.~~

(6) Appeal of suspension or revocation.

Appeal of A proposed and final orders of suspension or revocation issued under this rule may be made appealed under as provided in OAR 436-180050-0008 and OAR 436-001.

~~(7) Notwithstanding section (4) of this rule, the director may immediately suspend or refuse to renew a license by issuing an "emergency suspension order" if the worker~~

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~~leasing company fails to maintain workers' compensation coverage; or if the director finds there is a serious danger to public health or safety.~~

~~(8) A suspension or revocation may apply to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company's assets to another person.~~

Statutory authority: ORS 656.726(4), ~~656.850~~ and 656.855

Statutes implemented: ORS 656.850 and 656.855

Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

436-050180-04700170 Monitoring and /Auditing

(1) Generally.

The director will monitor and conduct periodic audits of employers as necessary to ensure compliance with the worker leasing company licensing and performance requirements.

(2) Disclosure of worker leasing records.

~~All pertinent records of the~~ worker leasing company must make all records required by these rules ~~must be disclosed available to the director~~ upon request ~~of the director~~. The records must be made available at no cost to the director.

(3) Inspection of books, records, and payroll.

Under ORS 656.726 and 656.758, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers must ~~provide the director with~~ make all pertinent books, records and payrolls available for inspection by the director without cost, upon request. The records must be made available at no cost to the director.

(4) "Employer" defined.

For the purposes of this rule, "employer" includes both the worker leasing company, temporary service provider, and ~~its clients will be considered employers~~.

Statutory authority: ORS 656.726(4), ~~656.850~~ and 656.855

Statutes implemented: ORS ~~656.850 and~~ 656.855

Hist: Amended 11/1/07 as WCD Admin. Order 07-063, eff. 11/28/07

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13

Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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

436-050180-04800200 Assessment of Civil Penalties

~~(1) Failure to provide timely notice to the director for proof of coverage and cancellation of workers' compensation insurance policies under ORS 656.419 or OAR 436-162, or failure to provide timely worker leasing notice to the director under ORS 656.850(5) and OAR 436-050-0410, may result in civil penalties under ORS 656.745.~~ **(1) Failure to comply with statutes, rules, and orders of the director.**

The director may assess a civil penalty against a worker leasing company that fails to comply with the requirements of ORS 656.850, 656.855, OAR 436-180, or the orders of the director.

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DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
Proposed WORKER LEASING

(2) Failure to comply with OAR 436-180-0170.

The director may assess a civil penalty ~~under ORS 656.745~~ against any employer ~~who that~~ fails to respond to requests for information or fails to meet the requirements of ~~436-050180-04700170~~. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

~~(3) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty under ORS 656.745.~~

(43) Leasing workers without a license.

~~The director may assess a civil penalty against An any person employer who is found to be operating a worker leasing company without having obtained a valid license or after having failed to renew a license, or who continues to operate in Oregon as a worker leasing company after a prior Oregon license expired., may be assessed a civil penalty for each violation under ORS 656.745.~~

~~(5) For the purposes of ORS 656.850(2) this section, a violation is defined as any any month or part of a month for each client in which an employer person provides leased workers to a client without having first obtained a valid worker leasing license is a separate violation.~~

(64) Obtaining workers from an unlicensed worker leasing company.

~~The director may assess a civil penalty against An an employer that leases or continues to obtaining lease -workers by contract and for a fee from an unlicensed worker leasing company on a non-temporary basis may be subject to penalties under ORS 656.745. Upon a subsequent or continuing violation whereafter written notice of such violation has been served., penalties under ORS 656.745 will be assessed against the employer.~~

(75) Penalties under ORS 656.990.

Any person or controlling person that knowingly makes any false statement or representation may also be subject to penalties ~~under ORS 656.990.~~

Statutory authority: ORS 656.726(4), ~~656.850~~ and 656.855;

Statutes implemented: ORS 656.745, 656.850, ~~and~~ 656.855, and 656.990

Hist: Amended 9/17/08 as WCD Admin. Order 08-061, eff. 7/1/09

Amended 10/4/12 as WCD Admin. Order 12-056, eff. 1/1/13 Amended 11/28/16 as WCD Admin. Order 16-054, eff. 1/1/17

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