

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
Proposed WORKERS' COMPENSATION BENEFITS OFFSET



Workers' Compensation Benefits Offset

Oregon Administrative Rules

Chapter 436, Division 100

Proposed to be effective Jan. 1, 2027

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Historical rules: https://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 100

436-100-0001 — Authority for Rules

~~(1) These rules are promulgated under the director's authority contained in ORS 656.726 and 656.727.~~

Statutory authority: ORS 656.209, ORS 656.726 and ORS 656.727
Statutes implemented: ORS 656.209
Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
WCD 2-1984 (Admin), filed and eff. 2/22/84

436-100-0002 — Purpose

~~The purpose of these rules is to establish requirements and procedures for offsetting permanent total disability benefits against social security disability benefits.~~

Statutory authority: ORS 656.209 and ORS 656.727
Statutes implemented: ORS 656.209
Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
WCD 2-1984 (Admin), filed and eff. 2/22/84
Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0003 Purpose and Applicability of these Rules

(1) Purpose.

The purpose of these rules is to establish requirements and procedures for offsetting permanent total disability benefits against social security disability benefits.

(1)(2) Applicability.

~~(a) These rules apply on or after the effective date are effective January 1, 2016, to carry out the provisions of ORS 656.209 and 656.727.~~

~~(2)(b)~~ These rules apply to:

~~(a)(A) Those w~~Workers receiving awards for permanent total disability and eligible for ~~and receiving~~ federal social security disability benefits; ~~and whose~~ period of disability under the Social Security Administration began on or after June 1, 1965.

~~(b) Injured workers whose period of disability under the Social Security Administration began on or after June 1, 1965.~~

~~(B) Beneficiaries, as defined in OAR 436-100-0005.~~

~~(C) Insurers authorized to offset a worker's permanent total disability benefits.~~

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~~(3)~~ **(c)** The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Statutory authority: ORS 656.209 and ORS 656.727
 Statutes implemented: ORS 656.209
 Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
 WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
 WCD 2-1984 (Admin), filed and eff. 2/22/84
 Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98
 Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0005 Definitions

(1) "Authorization" means an order issued by the Workers' Compensation Division directing the insurer paying agent to offset the worker's permanent total disability benefits by the amount specified in the order.

(2) "Beneficiary" means ~~an injured worker, and~~ the spouse, child or dependent of a worker, who is entitled to receive permanent total disability benefits or federal social security disability benefits. payments under ORS 656.001 through 656.794.

(3) "Business days" means Monday through Friday, excluding legal holidays. Legal holidays are those listed in ORS 187.010 and 187.020.

~~**(3) "Department"** means the Department of Consumer and Business Services.~~

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

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Federal Disability Benefit Limitation" means the amount determined under 42 USC 224(a) and Social Security Administration rules.

(7) "Full retirement age" means "retirement age," as defined in 42 U.S.C. § 416(l)(1).

(8) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or an employer or employer group that has been certified under ORS 656.430 that meets the qualifications of a self-insured employer under ORS 656.407.

~~**(7)(9) "Offset"**~~ means a reduction of permanent total disability benefits based on the amount of federal social security disability benefits received by a worker.

~~**(8) "Paying agency" or "paying agent"** means the self-insured employer or insurer paying benefits to the worker or beneficiaries.~~

~~**(9) "Performance Section"** means the Performance Section of the Workers' Compensation Division.~~

(10) "Permanent total disability benefits" means compensation to an injured worker awarded permanent total disability compensation under ORS 656.206.

(11) "Worker" means any worker receiving permanent total disability benefits.

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(12) "Statutory benefit" means any benefit payable to or on behalf of the injured worker under the law in effect at the time of the worker's injury, as modified by marital and dependency status changes.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.209
Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
WCD 2-1984 (Admin), filed and eff. 2/22/84
Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98
Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0006 Administration of Rules

In administration of these rules, orders of the Workers' Compensation Division are deemed orders of the director.

Statutory authority: ORS 656.726
Statutes implemented: ORS 656.209 and ORS 656.726
Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
WCD 2-1984 (Admin), filed and eff. 2/22/84
Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0008 Administrative Review/Reconsideration; Hearings

(1) Any worker who disagrees aggrieved by any with their offset authorization ~~of the division~~ may request apply to the Workers' Compensation Division for a reconsideration of that authorization from the director before requesting a hearing.

(a) The request must be submitted in writing no later than 60 days after the date the authorization was issued.

(b) The request must specify the reasons why the worker disagrees with the authorization and may include additional documentation.

(c) The director will reconsider the authorization and notify all directly affected parties of its decision upon review.

(2) Any party ~~aggrieved who disagrees with an offset authorization~~ may request a hearing under ORS 656.283.

Statutory authority: ORS 656.726 and ORS 656.727
Statutes implemented: ORS 656.209
Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
WCD 2-1984 (Admin), filed and eff. 2/22/84
Amended 12/4/97 as WCD Admin. Order 97-063, eff. 1/1/98
Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0010 Criteria for Eligibility

(1) Permanent total disability benefits must be offset by the workers' social security disability benefits. However, the total combined benefit, permanent total disability benefits plus social security disability benefits, must not be offset to an amount less than the greater of:

(a) The amount the worker would have received under ORS chapter 656; or

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(b) The Federal Disability Benefit Limitation.

- (2) Permanent total disability benefits must not be paid by the insurer paying agent in an amount greater than authorized by ORS Chapter 656.
- (3) Offset of permanent total disability benefits must be made by an insurer paying agent only in an amount and as authorized by the director.
- (4) Offset of permanent total disability benefits will be authorized by the director only upon actual receipt of federal social security disability benefits by the injured worker.

Statutory authority: ORS 656.209 and ORS 656.727
 Statutes implemented: ORS 656.209
 Hist: WCB 7-1987, f. 6/5/78, eff. 6/6/78
 WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
 WCD 2-1984 (Admin), filed and eff. 2/22/84
 Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0020 Requirements of Workers' Responsibilities

- (1) ~~Workers~~ When notified by the director that they are entitled to receive permanent total disability benefits, a worker must make application for federal social security disability benefits within 30 calendar days.
- (2) ~~A W~~workers and their eligible beneficiaries must, ~~upon department request~~, execute a release form authorizing the Social Security Administration to make disclosure to the director ~~department~~ of such information regarding the injured workers as will enable the director ~~department~~ to carry out the provisions of ORS 656.209 and these rules, within 30 calendar days upon request from the director.
- (3) ~~Whenever there is a change in the federal social security beneficiary eligibility, the A~~ worker must notify the director within 30 calendar days of any change in their federal social security eligibility or in the number or eligibility of their beneficiaries. ~~Performance Section.~~
- (4) If a worker plans to begin receiving social security retirement benefits before their full retirement age, they must notify the director at least 30 calendar days before the date that they plan to begin receiving social security retirement benefits.
- (4) (5) Upon director request ~~of the department~~, the worker may be required at any time to furnish provide additional information necessary to carry out OAR 436-100. ~~regarding social security disability benefits.~~

Statutory authority: ORS 656.209 and ORS 656.727
 Statutes implemented: ORS 656.209 and ORS 656.727
 Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
 WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
 WCD 2-1984 (Admin), filed and eff. 2/22/84
 Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0030 Authorization, Amendment, and Termination of Offset; Effective Dates

- (1) Authorization issued by the director ~~department~~ will be directed to the insurer paying agent with a copy to the injured worker.
- (2) An insurer paying agent making payment of permanent total disability benefits will be entitled to social security disability offset only as authorized by the director ~~department~~.

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(3) The ~~director department~~ will review the social security offset calculation, and issue an amended authorization if necessary, when notified of a change to: in the status of a worker subject to social security offset. An amended authorization will be issued, if necessary.

(a) The number of beneficiaries of a worker;

(b) The eligibility of any of the worker's beneficiaries; or

(c) The worker's social security disability benefit amount.

~~(4) Whenever there is a change in eligibility status of the worker or any one of the worker's beneficiaries receiving benefits for permanent total disability subject to offset, the paying agent must notify the Performance Section.~~

(4) Authorization terminates:

(a) When the worker dies;

(b) When the worker reaches full retirement age;

(c) If the worker chooses to begin receiving social security retirement benefits before their full retirement age;

(d) If the Social Security Administration determines that the worker is no longer eligible for social security disability benefits; or

(e) If the worker is no longer eligible for permanent total disability benefits.

(5) When an authorization terminates under section (4) of this rule;

(a) When the worker dies, the termination date is immediately upon the worker's death.

(b) When the worker reaches full retirement age, the termination date is the first day of the month that the worker is no longer receiving social security disability benefits.

(c) If the worker chooses to begin receiving social security retirement benefits before their full retirement age, the termination date is the first day of the month that the worker is no longer receiving social security disability benefits.

(d) If the worker is no longer eligible for social security disability benefits, the termination date is the first day of the month that the worker is no longer receiving social security disability benefits.

(e) If the worker is no longer eligible for permanent total disability benefits, the termination date is the date that the worker stops receiving permanent total disability benefits.

~~(5) The paying agent must, immediately upon the death of a worker, terminate payment of previously authorized permanent total disability benefits offset and begin payment of other compensation due under ORS chapter 656, if any.~~

(6) The effective date of offset must be the effective date established in the authorization.

Statutory authority: ORS 656.209 and ORS 656.727
 Statutes implemented: ORS 656.209 and ORS 656.727
 Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
 WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83

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WCD 2-1984 (Admin), filed and eff. 2/22/84
 Amended 10/12/15 as WCD Admin. Order 15-064, eff. 1/1/16

436-100-0035 Insurer Responsibilities

- (1) An insurer authorized to offset a worker's permanent total disability benefits must first apply the offset to the statutory portion of the permanent total disability benefits. Any amount of the offset that exceeds the statutory benefit must be applied against the Retroactive Program portion of the benefits, if any. For more information about applying the offset, see OAR 436-075-0030(4)).
- (2) An insurer authorized to offset a worker's permanent total disability benefits must send a notice of explanation to the injured worker and their attorney if represented, with a copy sent to the division. The notice must:
 - (a) Be sent within 15 business days of the date the offset authorization is issued;
 - (b) State the effective dates;
 - (c) Explain how the worker's benefits will be affected by the authorization including the benefit amounts before and after the offset;
 - (d) Include any additional information to help the worker understand their benefits; and
 - (e) Include the following notice in bold:

Notice to worker:

If you disagree with the offset applied to your benefits, you may ask the Workers' Compensation Division for reconsideration. The director will review the amount of the offset and determine if it is correct.

Send, email, or fax written requests to:

Workers' Compensation Division
Reimbursements Team
PO Box 14480
Salem OR 97309-0405

Email: wcd.sirr-reimbursements@dcbs.oregon.gov
Fax: 503-947-7725

If you have any questions, you may call the Workers' Compensation Division at 800-452-0288 (toll-free) or 503-947-7189.

- (3) An insurer must remove the offset on the first day of the month that the worker reaches full retirement age and is no longer receiving social security disability benefits. If the offset is not removed on the first day of the month that the worker reaches full retirement age, the insurer must pay the worker any amount that was offset.
- (4) If notified that a worker plans to begin receiving social security retirement benefits before their full retirement age, the insurer must:

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(a) Remove the offset on the first day of the month that the worker stops receiving social security disability benefits; and

(b) Notify the director in writing within 15 business days of being notified of this change.

(5) ~~The paying agent~~ An insurer must, immediately upon the death of a worker, terminate payment of the previously authorized permanent total disability benefits offset and begin payment of other compensation due under ORS chapter 656, if any. For more information on payment requirements, see OAR 436-060-0075(7).

(6) If notified that a worker is no longer eligible for permanent total disability benefits, the insurer must terminate payment of the previously authorized permanent total disability benefits offset and begin payment of other compensation due under ORS chapter 656, if any.

(7) An insurer must notify the director in writing within 15 business days if they are notified of any change ~~(4) Whenever there is a change in the eligibility status of the worker or in the number or eligibility of any one of the worker's beneficiaries. receiving benefits for permanent total disability subject to offset, the paying agent must notify the Performance Section.~~

(8) An insurer may apply an offset under OAR 436-100-0030 only when authorized by the director. An insurer must remove or amend an offset in accordance with OAR 436-100-0030 when required by OAR 436-100-xxxx or when ordered by the director.

Statutory authority: ORS 656.209 and ORS 656.727
 Statutes implemented: ORS 656.209 and ORS 656.727

436-100-0040 Civil Penalties and Sanctions Against Worker for Failure to Cooperate With the Department

(1) The director may assess a civil penalty under ORS 656.745(2) against an insurer that violates ORS chapter 656, OAR 436-100, or an order of the director.

~~(1)~~(2) Any worker entitled to receive permanent total disability benefits who fails to comply with these rules will be subject to suspension of benefits until the worker has complied.

~~(2)~~(3) If a worker fails to comply with these rules, the director will make a written demand upon the worker by personal service or by registered or certified mail. If the worker fails to comply within 20 calendar days of receipt of the demand, the director may authorize suspension of benefits until the worker complies.

~~(3)~~(4) An order of suspension of benefits will continue in force from the date issued until the date the worker actually complies with these rules.

~~(4)~~(5) No compensation will become due or be payable during a period of suspension of benefits.

Statutory authority: ORS 656.209 ~~and~~ ORS 656.727, and ORS 656.745
 Statutes implemented: ORS 656.209 ~~and~~ ORS 656.727, ORS 656.745
 Hist: WCB 7-1987, filed 6/5/78, eff. 6/6/78
 WCD 4-1983 (Admin) (Temp), filed and eff. 9/1/83
 WCD 2-1984 (Admin), filed and eff. 2/22/84
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