



NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 436

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

WORKERS' COMPENSATION DIVISION

FILED: 09/09/2026 2:49 PM

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Changes to OAR 436-100, Workers' Compensation Benefits Offset

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/28/2026 11:55 PM

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

CONTACT:

Marie Rogers
971-286-0316
wcd.policy@dcbs.oregon.gov
350 Winter St NE
PO Box 14480
Salem, OR 97301

Filed By:

Marie Rogers
Rules Coordinator

HEARING(S)

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

DATE: 10/21/2026

TIME: 11:00 AM

OFFICER: Marie Rogers

REMOTE HEARING DETAILS

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

PHONE NUMBER: 971-286-0316

SPECIAL INSTRUCTIONS:

Virtual only

NEED FOR THE RULE(S):

Rule amendments are needed to clarify in rule existing practices relating to the social security offset, enhancing clarity and transparency of the process.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Rulemaking advisory committee records and any 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 Marie Rogers, rules coordinator, 971-286-0316, WCD.Policy@dcbs.oregon.gov.

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

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

FISCAL AND ECONOMIC IMPACT:

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

COST OF COMPLIANCE:

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

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

- a. The agency estimates that proposed rule changes will not increase costs to state agencies for compliance with the rules.
- b. The agency estimates that proposed rule changes will not increase costs to units of local government for compliance with the rules.
- c. The agency estimates that proposed rule changes will not increase costs to the public for compliance with the rules.

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

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: The businesses affected by the proposed rule amendments are primarily insurers, self-insured employers, and service companies. However, insurers and self-insured employers tend to be large employers and not small businesses as defined in ORS 183.310. There are 23 active service companies, some of which are small businesses and subject to these rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: The agency estimates that adoption of the proposed amendments will not affect costs to small businesses for reporting, recordkeeping, other administrative activities, or professional services required for compliance.

c. Equipment, supplies, labor and increased administration required for compliance: The agency estimates that adoption of the proposed amendments will not affect costs to small businesses for equipment, supplies, labor, or increased administration required for compliance.

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

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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

436-100-0001, 436-100-0002, 436-100-0003, 436-100-0005, 436-100-0008, 436-100-0010, 436-100-0020, 436-100-0030, 436-100-0035, 436-100-0040

REPEAL: 436-100-0001

RULE SUMMARY: OAR 436-100-0001 is repealed to remove a statement relating to the director's authority.

CHANGES TO RULE:

~~436-100-0001~~

~~Authority for Rules~~

~~These rules are promulgated under the Director's authority contained in ORS 656.726 and 656.727.~~

~~Statutory/Other Authority: ORS 656~~

~~Statutes/Other Implemented: ORS 656.209, 656.726, ORS 656.727~~

REPEAL: 436-100-0002

RULE SUMMARY: OAR 436-100-0002 is repealed and the content has been moved to OAR 436-100-0003, combining the purpose and applicability rules.

CHANGES TO RULE:

~~436-100-0002~~

~~Purpose of Rules~~

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

~~Statutory/Other Authority: ORS 656.209, 656.727~~

~~Statutes/Other Implemented: ORS 656.209~~

AMEND: 436-100-0003

RULE SUMMARY: OAR 436-100-0003(b) is amended to expand on the applicability of the rules, clarifying which workers they apply to and adding beneficiaries and insurers.

CHANGES TO RULE:

436-100-0003

Purpose and Applicability of these Rules ¶

~~(1) These rules are effective January 1, 2016.~~
Purpose. The purpose of these rules is to establish requirements and procedures for offsetting permanent total disability benefits against social security disability benefits.¶

(2) Applicability.¶

(a) These rules apply on or after the effective date to carry out the provisions of ORS 656.209 and 656.727.¶

~~(2b) These rules apply to:¶~~

~~(a) Those workers receiving awards for permanent total disability and eligible for and receiving federal social security disability benefits; and¶~~

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

(3B) Beneficiaries, as defined in OAR 436-100-0005.¶

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

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

Statutory/Other Authority: ORS 656.209, 656.727

Statutes/Other Implemented: ORS 656.209

RULE SUMMARY: OAR 436-100-0005 is amended to:

- Change the term "paying agent" to "insurer" in section 1.
- Clarify the definition of "beneficiary" in section 2.
- Add a definition of "business days" in section 3.
- Clarify the definition of "division" in section 5.
- Add a definition of "full retirement age" in section 7.
- Add a definition of "insurer" in section 8.
- Add a definition of "statutory benefit" in section 12.
- Remove the definitions of "department," "paying agent," and "performance section."

CHANGES TO RULE:

436-100-0005

Definitions ¶

- (1) "Authorization" means an order issued by the Workers' Compensation Division directing the ~~paying agent~~insurer 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 ~~payments under ORS 656.001 through 656.794.~~ ¶
- ~~(3) "Department" means the Department of Consumer and Business Services.~~ permanent total disability benefits or federal social security disability benefits. ¶
- ~~(3) "Business days" means Monday through Friday, excluding legal holidays. Legal holidays are those listed in ORS 187.010 and 187.020.~~ ¶
- (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) "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.~~ 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.~~ ¶
- ~~(9) "Offset" means a reduction of permanent total disability benefits based on the amount of federal social security disability benefits received by a worker.~~ ¶
- (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. ¶
- (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/Other Authority: ORS 656.726

Statutes/Other Implemented: ORS 656.209

AMEND: 436-100-0008

RULE SUMMARY: OAR 436-100-0008 is amended to:

- Rename the title of the rule to "Reconsideration; Hearings."
- Clarify the reconsideration process, specifying the steps and requirements for a worker to request reconsideration of their offset authorization.

CHANGES TO RULE:

436-100-0008

~~Administrative Review~~ Reconsideration; Hearings ¶

(1) Any worker ~~aggrieved by any offset authorization of the division in~~ who disagrees with their offset authorization may request reconsideration of that authorization from the director before requesting a hearing. ¶

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

(b) The request must specify the reasons why the ~~Workers' Compensation Division~~ disagrees with the authorization and may include additional documentation. ¶

(c) The director will reconsideration of that authorization before requesting a hearing 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/Other Authority: ORS 656.726, 656.727

Statutes/Other Implemented: ORS 656.209

AMEND: 436-100-0010

RULE SUMMARY: OAR 436-100-0010 is amended to change the term “paying agent” to “insurer” in sections 2 and 3.

CHANGES TO RULE:

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¶

(b) The Federal Disability Benefit Limitation.¶

(2) Permanent total disability benefits must not be paid by the ~~paying agent~~insurer in an amount greater than authorized by ORS Chapter 656.¶

(3) Offset of permanent total disability benefits must be made by a ~~paying agent~~insurer 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/Other Authority: ORS 656.209, 656.727

Statutes/Other Implemented: ORS 656.209

RULE SUMMARY: OAR 436-100-0020 is amended to:

- Rename the title of the rule to "Worker Responsibilities".
- Add a deadline of 30 calendar days for workers to complete existing requirements relating to the social security application process in sections 1 and 2.
- Add a deadline of 30 calendar days and clarify language relating to the existing requirements of notifying the director of changes to eligibility of beneficiaries in section 3.
- Add a requirement for the worker to notify the director if they plan to receive social security retirement benefits before full retirement age in section 4.
- Clarify the information that a worker may need to provide to the director in section 5.
- Change the term "department" and "performance section" to "director" in sections 2, 3, and 5.

CHANGES TO RULE:

436-100-0020

~~Requirements of Workers~~ Worker 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) ~~WA~~ workers and their eligible beneficiaries must, ~~upon department request,~~ execute a release form authorizing the Social Security Administration to make disclosure to the ~~department~~ director of such information regarding the injured workers as will enable the ~~department~~ director to carry out the provisions of ORS 656.209 and these rules.¶
- (3) ~~Whenever there is a,~~ within 30 calendar days upon request from the director.¶
- (3) A worker must notify the director within 30 calendar days of any change in their federal social security beneficiary eligibility or in the number or eligibility; of the worker must notify the Performance Section or beneficiaries.¶
- (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 request of the department~~ director request, the worker may be required at any time to ~~furnish~~ provide additional information ~~regarding social security disability benefits~~ necessary to carry out OAR 436-100.
- Statutory/Other Authority: ORS 656.209, 656.727
- Statutes/Other Implemented: ORS 656.209, 656.727

RULE SUMMARY: OAR 436-100-0030 is amended to:

- Rename the title of the rule to "Authorization, Amendment, and Termination of Offset; Effective Dates".
- Change the term "department" to "director" in sections 1, 2, and 3.
- Change the term "paying agent" to "insurer" in sections 1 and 2.
- Amend section 3 to clarify the situations that may result in an amended authorization.
- Move a requirement from this rule to the new rule OAR 436-100-0035, Insurer Responsibilities requiring notification of a change in beneficiaries.
- Clarify the situations that result in the termination of an authorization in section 4.
- Clarify when an authorization termination under section 4 goes into effect in section 5.
- Move a requirement from this rule to the new rule OAR 436-100-0035, Insurer Responsibilities, requiring termination of the offset when the worker dies.

CHANGES TO RULE:

436-100-0030

Authorization, Amendment, and Termination of Offset; Effective Dates ¶

(1) Authorization issued by the ~~department~~director will be directed to the ~~paying agent~~insurer with a copy to the injured worker. ¶

(2) A ~~paying agent~~insurer making payment of permanent total disability benefits will be entitled to social security disability offset only as authorized by the ~~department~~director. ¶

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

(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) Authorization terminates: ¶

(a) When the worker dies; ¶

(4b) 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 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 ~~Performance Section~~ termination date is the first day of the month that the worker is no longer receiving social security disability benefits. ¶

(5c) 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. 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. ¶

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

Statutory/Other Authority: ORS 656.209, 656.727

Statutes/Other Implemented: ORS 656.209, 656.727

RULE SUMMARY: OAR 436-100-0035 is adopted to:

- Establish in rule existing requirements for insurers relating to offsetting a worker's permanent total disability benefits.
- Clarify how the offset must be applied in section 1.
- Require the insurer to send a notice of explanation to the worker and specify requirements relating to the notice, in section 2.
- Specify requirements relating to removing the offset in section 3.
- Require the insurer to notify the division if a worker is taking retirement before their full retirement age in section 4.
- Clarify language relating to existing requirements when a worker dies in section 5.
- Specify requirements for insurers when a worker is no longer eligible for permanent total disability benefits in section 6.
- Clarify language relating to existing insurer requirements when there is a change in eligibility in section 7.
- Specify insurer responsibilities relating to applying, removing, and amending an authorization in section 8.

CHANGES TO RULE:

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: [SEE ATTACHMENT.] ¶

(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:¶

(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) 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 in the eligibility of the worker or in the number or eligibility of any of the worker's beneficiaries.¶

(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/Other Authority: ORS 656.209, ORS 656.727

Statutes/Other Implemented: ORS 656.209, ORS 656.727

RULE ATTACHMENTS MAY NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

NOTE: Attachments referenced are attached to this document. You may view the attachment 436-100-0035.pdf from the Attachments panel. Alternately, you may view the attachments at the following link:

<https://secure.sos.state.or.us/oard/viewAttachment.action?ruleVrsnRsn=339563>

AMEND: 436-100-0040

RULE SUMMARY: OAR 436-100-0040 is amended to:

- Rename the title of the rule to "Civil Penalties and Sanctions."
- Clarify in rule that the director may assess a civil penalty against an insurer in section 1.
- Specify that a demand may be sent via certified mail in section 3.
- Specify that 20 days means 20 calendar days in section 3.

CHANGES TO RULE:

436-100-0040

~~Sanctions Against Worker for Failure to Cooperate with the Department~~ Civil Penalties and Sanctions ¶

(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.¶

(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.¶

(~~23~~) 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.¶

(~~34~~) An order of suspension of benefits will continue in force from the date issued until the date the worker actually complies with these rules.¶

(~~45~~) No compensation will become due or be payable during a period of suspension of benefits.

Statutory/Other Authority: ORS 656.209, 656.727, ORS 656.745

Statutes/Other Implemented: ORS 656.209, 656.727, ORS 656.745