

OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

FILED
09/22/2021 10:38 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Increased payment to insurer or self-insured employer for administration of Employer-at-Injury Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/25/2021 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: Fred Bruyns
503-947-7717
WCD.Policy@oregon.gov

350 Winter Street NE
PO Box 14480
Salem, OR 97309

Filed By:
FREDERICK BRUYNS
Rules Coordinator

HEARING(S)

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

DATE: 10/18/2021

TIME: 10:30 AM

OFFICER: Fred Bruyns

ADDRESS: Virtual - videoconference
or telephone

350 Winter Street NE

PO Box 14480

Salem, OR 97309

SPECIAL INSTRUCTIONS:

Virtual hearing – Join ZoomGov

Meeting. See instructions under "Need
for the Rule(s)" below.

NEED FOR THE RULE(S):

The Employer-at-Injury Program (EAIP) encourages the early return to work of injured workers by providing incentives to employers, such as wage subsidies and the purchase of items necessary for transitional work.

For injured workers, transitional work can provide multiple benefits, including wages during temporary disability, improved recovery from occupational injuries and disease, and increased lifetime earnings. Data collected by the division shows workers who receive EAIP benefits have higher wage recovery rates (5 percent higher) and employment rates (4 percent higher) compared to those who do not.

For employers, EAIP can help reduce the costs related to a worker's early return to work. Insurers assist the employer in participating in the program, and are paid a flat fee of \$120 per claim to help cover the cost to administer the program.

Claims reported to the division show the percentage of claims in which EAIP was used has declined from 38.5 percent in 2012 to 29.4 percent in 2019. The administrative fee has not changed since 2007, and does not account for inflation, or the costs associated with increased reporting and administration requirements. An increase in the fee is needed to encourage use of the program. Increasing participation in EAIP should promote improved outcomes for workers and reduce costs for employers.

Virtual hearing – Join ZoomGov Meeting:

<https://www.zoomgov.com/j/1618372629?pwd=UVhUbEVydE44TWFIYkxMWVdyMGF3dz09>

Meeting ID: 161 837 2629 | Passcode: 379967

Dial-in: 1-833-568-8864 US Toll-free | Meeting ID: 161 837 2629

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Advisory committee meeting 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, WCD.Policy@oregon.gov.

FISCAL AND ECONOMIC IMPACT:

Based on EAIP expenditures from July 1, 2020 – June 30, 2021 (Fiscal Year 2021), a \$60 increase to the administrative fee would increase EAIP expenditures from the Workers' Benefit Fund (WBF) by approximately \$457,723 per year. The payments for administration would rise from 4.12 percent to 6.19 percent of total EAIP costs, or from 0.61 percent to 0.92 percent of total reserves in the WBF. The ending balance in the WBF for FY 2021 was \$149,617,795.

Under ORS 656.506, the WBF should have a minimum fund balance of no less than 12 months of projected expenditures. For FY 2022, this is approximately \$86.9 million. At the end of FY 2021, the WBF contained reserves sufficient for approximately seven quarters of projected expenditures. The proposed increase in the administrative fee represents 0.55 percent of annual expenditures from the WBF in FY 2021. The change would not put the WBF at risk of falling below the statutorily required 12-month balance.

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 the proposed rule change will not affect costs to state agencies for compliance with the rule.

b. The agency estimates that the proposed rule change will not affect costs to units of local government for compliance with the rule, except for cities and counties that are self-insured. See estimates for impacts to the public under 1.c.

c. The agency estimates that the proposed rule change will reduce costs to the public for compliance with the rule. Insurers and self-insured employers administer EAIP and should benefit from any increase in payment for their administrative costs. Based on FY 2021 EAIP expenditures, the proposed increase from \$120 to \$180 would result in additional payments to insurers and self-insured employers of approximately \$457,723 per year. Appropriate payment of administrative costs should encourage insurer and self-insured employer participation in the program, and assist employers in returning more workers to transitional work.

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:

Only workers' compensation insurers and self-insured employers are directly affected by the proposed increased payments, and these entities are usually large businesses.

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

The agency projects that there will be no increased costs for reporting, recordkeeping, or other administrative activities required for compliance, including costs of professional services.

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

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

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

Small businesses are not directly affected by the proposed rule change. However, the agency sent a request for advice and advisory committee members to more than 3,500 individuals and organizations, including representatives of small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 436-105-0540

RULE SUMMARY: Proposed rule OAR 436-105-0540 increases the fee paid to insurers for administering the Employer-

at-Injury Program from \$120 to \$180.

CHANGES TO RULE:

436-105-0540

Employer-at-Injury Program Reimbursement Procedures ¶¶

The following provisions apply when the insurer requests reimbursement from the division under the Employer-at-Injury Program:¶¶

- (1) Reimbursable benefits. Reimbursements may include wage subsidy, Employer-at-Injury Program purchases, and worksite modification.¶¶
- (2) Program administrative costs. The insurer is entitled to a program administrative cost of ~~\$1280~~ for the first approved reimbursement request for an Employer-at-Injury Program. Subsequent requests for reimbursement, including amended requests, for the same Employer-at-Injury Program are not entitled to additional program administrative costs.¶¶
- (3) Minimum reimbursement request. The first reimbursement request for an Employer-at-Injury Program must be for a minimum of \$100. Subsequent requests, including amended requests, may be for less than \$100.¶¶
- (4) Required documentation. The insurer must have all documentation required for reimbursement in its possession at the time reimbursement is requested. The insurer must stamp or display evidence of the initial date of receipt on each document as required under OAR 436-060-0017(2).¶¶
- (5) Timeframe for submitting a reimbursement request and required documentation.¶¶
 - (a) The employer must submit all required documentation for reimbursement to the insurer within one year from the end of the Employer-at-Injury Program.¶¶
 - (b) The insurer must submit to the division within one year and 30 days from the end of the Employer-at-Injury Program:¶¶
 - (A) Form 2360, "Employer-at-Injury Program (EAIP) Reimbursement Request Form." The form is published with Bulletin 260, both of which are available on the division's website at wcd.oregon.gov; and¶¶
 - (B) For EAIP purchases and worksite modifications:¶¶
 - (i) Documentation of the transitional work that includes the start date, wage and hours, and a description of the job duties;¶¶
 - (ii) The corresponding medical release that the transitional work was based on;¶¶
 - (iii) A legible copy of proof of any purchase showing the item was ordered during the Employer-at-Injury Program period and proof of payment for the item; and¶¶
 - (iv) Documentation of the insurer's approval of any worksite modifications.¶¶
- (6) Corrected request forms. If the reimbursement request form is incomplete or contains an error, the division may return the form to the insurer for correction. The insurer has 60 days from the date it receives the returned reimbursement request form from the division, or one year and 30 days from the end of Employer-at-Injury Program eligibility, whichever is later, to make the corrections and return the corrected form to the division.¶¶
- (7) Amended requests.¶¶
 - (a) Amended reimbursement requests must be submitted to the division within one year and 30 days from the end of the Employer-at-Injury Program eligibility except as otherwise permitted in this rule.¶¶
 - (b) An amended reimbursement request must clearly state that it is an amendment and clearly state the corrected information.¶¶
- (8) Denied claims.¶¶
 - (a) The insurer may request reimbursement when a claim that was initially denied is subsequently accepted after the Employer-at-Injury Program eligibility ended and more than one year and 30 days have passed. In that case, the insurer must submit a completed Form 2360, "Employer-at-Injury Program (EAIP) Reimbursement Request Form," with the documentation specified in (5)(b) of this rule to the division within 60 days of the first litigation order or stipulation and order accepting the claim. A copy of the order or stipulation must be attached to the reimbursement request form.¶¶

(b) The insurer may request reimbursement for a qualifying Employer-at-Injury Program that took place before a claim denial even if the claim is denied at the time the insurer submits the request to the division.¶¶

(9) Effect on rates, dividends, premiums, or assessments. The insurer may not use Employer-at-Injury Program costs subject to reimbursement for rate making, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments under ORS 656.612 and OAR 436-085 with the present or a future insurer. The insurer must be able to document that Employer-at-Injury Program costs do not affect the employer's rates or dividend.¶¶

(10) Claim costs. If a preferred worker employed by an eligible employer with active premium exemption under OAR 436-110-0325 incurs a new injury, the claim is subject to claim costs reimbursement under OAR 436-110-0330. If the worker subsequently begins an Employer-at-Injury Program, program costs must be separated from claim costs and will not be reimbursed as claim costs.

Statutory/Other Authority: ORS 656.622, ORS 656.726(4)

Statutes/Other Implemented: ORS 656.622