

# Agenda

## Rulemaking Advisory Committee

Workers' Compensation Division Rules  
OAR chapter 436, division 105,  
Employer-at-Injury Program

<b>Type of meeting:</b>	Rulemaking advisory committee
<b>Date, time, &amp; place:</b>	Sept. 11, 2019, 8:30 a.m., Pacific Daylight Time Room F (basement), Labor & Industries Building, 350 Winter Street NE, Salem, Oregon Please join meeting from your computer, tablet or smartphone. <a href="https://global.gotomeeting.com/join/725936061">https://global.gotomeeting.com/join/725936061</a> You can also dial in using your phone: United States (Toll Free): 1 877 568 4106 Access Code: 725-936-061
<b>Facilitators:</b>	Fred Bruyns, Katie Bruns, Workers' Compensation Division
<b>8:30 to 8:40</b>	Welcome and introductions; meeting objectives
<b>8:40 to 10:00</b>	Discussion of issues
<b>10:00 to 10:15</b>	Break
<b>10:15 to 11:15</b>	Discussion of issues continued New issues?
<b>11:15 to 11:25</b>	Summing up – next steps – thank you!

Attached: [Issues document](#)  
[Draft rules](#)

**OAR 436-105 Employer-at-Injury Program**  
**Issues Document**  
**For Stakeholder Advisory Committee Meeting**  
September 11, 2019, 8:30 A.M.

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**ISSUE No.1: Payroll records**

**Rule:** 436-105-0500(6)(d)

**Issue:** Stakeholders are unclear on the correct way to calculate wages for salaried workers for a partial payroll period.

**Background:** Effective Jan. 1, 2017, the division removed the rule that was formerly numbered OAR 436-105-0500(7)(c)(C), providing for how to calculate the allowable reimbursement amount if neither the payroll records nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods. [Senate Bill 1587 \(2016\)](#) (amending ORS 652.610), effective Jan. 1, 2017, requires employers to provide employees itemized pay statements that show, among other things: dates worked, rate of pay, gross wages, net wages, number of regular hours worked, and number of overtime hours worked.

However, ORS 652.610 does not require employers to provide itemized pay statements for salaried workers that are exempt from overtime compensation. The division has received questions from stakeholders inquiring on the correct way to calculate wages for a salaried worker when the wage subsidy period for EAIP includes a partial payroll period.

**Options:**

- Add back the paragraph (OAR 436-105-0500(7)(c)(C)) removed effective Jan. 1, 2017:  
If neither the payroll records nor supplemental documentation shows the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:
  - Divide the gross wages by the number of days in the payroll period for the daily rate; and
  - Multiply the daily rate by the number of eligible days
- Make no change
- Other?

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected.

**Recommendation:**

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**ISSUE No.2:** Employer-at-Injury Program (EAIP) and Preferred Worker Program (PWP) overlap

**Rule:** 436-105-0512(6)

**Issue:** Stakeholders have expressed confusion on whether they can activate EAIP benefits on a new claim while the worker is using PWP benefits on a separate claim.

**Background:** The division adopted OAR 436-105-0512(6) effective Jan. 1, 2017, to ensure costs were not being reimbursed from the Workers' Benefit Fund (WBF) for both EAIP and PWP on the same worker during the same claim opening. The rule does not preclude EAIP benefits from being activated on a new claim for the same worker even if PWP benefits have been activated on a different claim.

**Options:**

- Revise rule to clarify OAR 436-105-0512(6) only applies to accessing EAIP and PWP benefits on the same claim during the same claim opening, not different claims for the same worker.
- Make no change
- Other?

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected.

**Recommendation:**

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**ISSUE No. 3:** End of Eligibility

**Rule:** OAR 436-105-0512

**Issue:** Stakeholders have expressed confusion about the end of eligibility occurring at the earliest of the listed reasons under rule 0512.

**Background:** The division's reimbursement team has received questions from multiple employers regarding the end of eligibility after a worker leaves employment. The employers expressed confusion over when eligibility ends. When an employer no longer meets the eligibility criteria under OAR 436-105-0510(3), which requires them to employ an eligible worker, they are no longer eligible. Instead of using the last date they employed an eligible worker, they were using the claim closure date as the end of eligibility date.

The end of eligibility date is the date that begins the timeframe in which employers or insurers have to submit a reimbursement request. The reimbursement requests in these cases were not

timely because the employer submitted the request more than 1 year and 30 days from the end of eligibility date.

**Options:**

- Revise rule to clarify that eligibility for EAIP ends at the earliest of any of the reasons listed under OAR 436-105-0512.
- Make no change
- Other?

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected.

**Recommendation:**

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**ISSUE No.4:** Verification of Qualifying Purchases

**Rule:** 436-105-0540(5)

**Issue:** Currently, the division reimburses for EAIP purchases after receiving a request and without determining if it is a qualifying purchase. It is during periodic audits that occur a few years after the reimbursement, that the determination on the appropriateness of the reimbursement is made. Determining if reimbursement was appropriate after the fact can result in overpayments and subsequent recoupment from insurers.

**Background:** The current process is for the insurer to submit Form 2360 “Employer-at-Injury Program Reimbursement Request Form” to the division within one year and 30 days from the end of the EAIP period. The only requirement for reimbursement is the form. There is no verification that the purchase or modification is appropriate before it is reimbursed. It is during our periodic EAIP audits that auditors review the documentation and make a determination on whether the purchase qualified for reimbursement. If it is determined the purchase did not qualify for reimbursement, the insurer must pay the money back to the division. The division will still conduct periodic EAIP audits, and all reimbursements are subject to audit.

Recently, the division has become aware of some misuse of the EAIP for purchases and modifications. The only way to ensure purchases and worksite modifications do qualify for reimbursement up-front is to review the documentation before making the reimbursement to the insurer. This should result in fewer requests for repayment during an EAIP audit. When a reimbursement is paid without any verification that it qualifies, the employer may believe the payment means the division has reviewed the purchase and they have been reimbursed because we determined it qualified. The review up-front will provide the division a chance to educate an employer about which purchases and modifications do qualify for reimbursement, and also provide more opportunity for the division to request clarification before the reimbursement is paid.

The documentation is currently required to be in the claim file at the time of the reimbursement request. The division is not requesting the documentation for wage subsidy reimbursement requests. The majority of EAIP reimbursements are wage subsidy (roughly 90% for both 2017 and 2018).

**Options:**

- Require the documentation from OAR 436-105-0500(6)(b), (c), (f), and (g) with the reimbursement request form for EAIP purchases and worksite modifications only.
- Change OAR 436-105-0540(5) to:  
**(5) Timeframe for submitting reimbursement request and required documentation.** Within one year and 30 days from the end of the Employer-at-Injury Program, the insurer must submit to the division:
  - (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](http://wcd.oregon.gov); and
  - (b) For EAIP purchases and worksite modifications:
    - (A) Documentation of the transitional work that includes the start date, wage and hours, and a description of the job duties;
    - (B) The corresponding medical release that the transitional work was based on;
    - (C) A legible copy of proof of any purchases showing the item was ordered during the Employer-at-Injury Program period and proof of payment of the items; and
    - (D) Documentation of the insurer’s approval of any worksite modifications.
- Other options for making the reimbursement process smoother while ensuring purchases and modifications are appropriate?
- Make no change.
- Other?

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected, but the division invites input from the advisory committee members about costs, including costs to be borne by small businesses.

**Recommendation:**

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**ISSUE No.5:** Recovery of department’s legal costs

**Rule:** 436-105-0560(3)(b)

**Issue:** The division may not have the statutory authority to recover our legal costs as part of a sanction order.

**Background:** Since the division may not have the authority to recover legal costs, and we do not intend to attempt to recover legal costs, we are removing the language from the rule.

**Options:**

- Remove the second sentence in subsection (3)(b), “The order may include the department’s legal costs;”

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected.

**Recommendation:**

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**ISSUE No.6: Worker Eligibility**

**Rule:** 436-105-0511(2)

**Issue:** The rule is confusing and wordy.

**Background:** Under ORS 655.505 to 656.555, an adult in custody with the Department of Corrections that gets injured while participating in authorized work or an occupational training assignment receives benefits similar to workers’ compensation. The benefits an adult in custody receives are governed and administered by the Department of Corrections, and therefore, the adult in custody is not a subject worker and is not eligible for EAIP benefits.

Writing the rule in plain language will make it easier to understand.

**Options:**

- Change the wording to plain language:  
“Adults in custody eligible for benefits under ORS 655.505 to 655.555 and OAR 125-160 are not eligible for the Employer-at-Injury Program.”
- Other?

**Fiscal Impacts, including cost of compliance for small business:** No impacts are expected.

**Recommendation:**

## **Housekeeping**

105-0003 (Purpose and Applicability) – Change title to “Purpose and Applicability” and move (4) “Director’s discretion” under subsection (2) as (b). (consistent with changes being made to other divisions of rules)

105-0003 – Move subsection (3) “Submitting documents or information, calculating time” to a new rule number, 0004 with the same title.

105-0005 (Definitions) – Change introductory statement to: “Unless a term is defined in these rules or the context otherwise requires, the definitions of ORS chapter 656 are incorporated by reference and made part of these rules.” (consistent with changes being made to other divisions of rules)

105-0005(3) – Replace “delegate for the matter” with “designee” to make all definitions of “director” consistent across all divisions of rules.

105-0500(6)(h) – Amend reference to “home care worker” to read “home care worker or personal support worker” to coincide with the January 1, 2020, operative date of [SB 1534 \(2018\)](#).

105-0008(2)(b) – Change “appeal” to “administrative review”. (consistent with changes being made to other divisions of rules)

105-0005, 0006, 0560 – Change “monies” to “moneys” as used in chapter 656.

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**Employer-at-Injury Program  
Oregon Administrative Rules  
Chapter 436, Division 105**

***Proposed Draft, to be Effective Jan. 1, 2020***

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Revisions are marked as follows: [new text](#) | ~~deleted text~~.

Historical rules: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf)

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**OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 105**

**436-105-0003**     Purpose and Applicability~~General Provisions~~

**(1) Purpose.**

- (a) The rules in OAR 436-105 explain who qualifies for and how to request assistance and reimbursements from the Employer-at-Injury Program.
- (b) The Employer-at-Injury Program encourages the early return to work of injured workers by providing incentives from the Workers' Benefit Fund to employers.
- (c) The Employer-at-Injury Program is activated by the employer and administered by the insurer.
- (d) The purpose of Employer-at-Injury Program assistance is to:
  - (A) Enable the worker to perform transitional work within the worker's limitations that resulted in the worker's eligibility for the Employer-at-Injury Program;
  - (B) Prevent a worsening of the worker's compensable injury or occupational disease; or
  - (C) If the claim has not been accepted or denied, prevent a worsening of the claimed workers' compensation injury or occupational disease.

**(2) Applicability.**

- (a) These rules apply to:
  - (Aa) All individual employer-at-injury programs started on or after the effective date of these rules, unless otherwise provided in subsections (b) or (c) of this section;
  - (Bb) All wage subsidy reimbursement requests when the wage subsidy period began on or after the effective date of these rules; and
  - (Ce) All reimbursement requests received by the division on or after the effective date of these rules for worksite modification or program purchases, regardless of when the purchase was made.
- (b) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

~~**(3) Submitting documents or information, calculating time.**~~

- ~~(a) Documents or information required under these rules to be submitted to the division may be submitted in any of the following ways:~~
  - ~~(A) Mailed to the division's mailing address with sufficient postage and placed in the custody of the U.S. Postal Service;~~
  - ~~(B) Physical delivery to the division's Salem office;~~

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- ~~(C) Faxed, if the document transmitted indicates it has been delivered by fax, is sent to the correct fax number, and indicates the date it was sent; or~~
- ~~(D) Any other method authorized by the director.~~
- ~~(b) Timeliness under these rules is determined as follows:~~
- ~~(A) If a document is mailed, it will be considered submitted on the date it is postmarked.~~
- ~~(B) If a document is delivered, it must be delivered during regular business hours and marked as received to be considered submitted on that date.~~
- ~~(C) If a document is faxed, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date.~~
- ~~(c) Time periods allowed under these rules are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.~~

~~(4) Director's discretion.~~

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

Statutory authority: ORS 656.622, 656.726(4)  
 Statutes implemented: ORS 656.622  
 Hist: Amended 4/12/13 as Admin. Order 13-054, eff. 7/1/13  
 Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17  
 See also the Index to Rule History: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

**436-105-0004 Submitting documents or information, calculating time**

**(1) Submission of documents.** Documents may be:

- (a) Mailed to the division's mailing address with sufficient postage and placed in the custody of the U.S. Postal Service;
- (b) Physically delivered to the division's Salem office;
- (c) Faxed, if the document transmitted indicates it has been delivered by fax, is sent to the correct fax number, and indicates the date it was sent; or
- (d) Sent by any other method authorized by the director.

**(2) Timeliness:**

- (a) If a document is mailed, it will be considered submitted on the date it is postmarked.
- (b) If a document is delivered, it must be delivered during regular business hours and marked as received to be considered submitted on that date.
- (c) If a document is faxed, it must be received by 11:59 p.m. Pacific Time to be considered submitted on that date.

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(d) Time periods allowed under these rules are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Adopted xx/xx/xx as WCD Admin. Order 19-XXX, eff. xx/xx/xx

### 436-105-0005 Definitions

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

- (1) **"Client"** means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.
- (2) **"Department"** means the Department of Consumer and Business Services.
- (3) **"Director"** means the director of the Department of Consumer and Business Services, or the director's ~~designee~~delegate for the matter.
- (4) **"Division"** means the Workers' Compensation Division of the Department of Consumer and Business Services.
- (5) **"Employer at injury"** means the organization that employed the worker when the worker:
  - (a) Sustained the injury or occupational disease;
  - (b) Made the claim for aggravation; or
  - (c) Requested an Own Motion opening under ORS 656.278.
- (6) **"Insurer"** means the insurance company or self-insured employer responsible for the workers' compensation claim.
- (7) **"Premium"** means the moneysies paid to an insurer for the purpose of purchasing workers' compensation insurance.
- (8) **"Regular work"** means the job the worker held at the time of injury, claim for aggravation, or Own Motion opening under ORS 656.278.
- (9) **"Skills building"** means a class or course of instruction taken by the worker for the purpose of enhancing an existing skill or developing a new skill.
- (10) **"Transitional work"** means temporary work with the employer at injury that is not the worker's full-duty regular work and is assigned because the worker cannot perform full-duty regular work.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 12-1-2009 as WCD Admin. Order 09-059, eff. 1-1-2010

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

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**436-105-0006 Workers' Benefit Fund**

(1) The department maintains the financial integrity of the Workers' Benefit Fund under ORS 656.605 and all reimbursement is subject to the availability of funds. If the funds are too low for all reimbursements, the director has the final authority to determine how the funds will be disbursed.

(2) Monies in the Workers' Benefit Fund may not be used to provide concurrent benefits under the Employer-at-Injury Program and the Preferred Worker Program under OAR 436-110 for the same worker for the same period of time, with the exception of claims costs reimbursed under OAR 436-110-0330.

(3) The director may use monies from the Workers' Benefit Fund for activities to provide information about and encourage the re-employment of injured workers. A maximum of \$250,000 may be used in a fiscal year, July 1 to June 30. The director must approve all expenditures. Activities include, but are not limited to:

- (a) Advertisements and promotion of re-employment assistance programs and associated production costs; and
- (b) Public re-employment assistance program conferences and workshops.

Statutory authority: ORS 656.622, 656.726(4)  
 Statutes implemented: ORS 656.622  
 Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01  
 Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

**436-105-0008 Denial of Reimbursement, Reconsideration, Director's Review****(1) Denial of reimbursement.**

The director will deny any reimbursement for Employer-at-Injury Program assistance it finds violates these rules. The director has the discretion to deny any reimbursement of Employer-at-Injury Program assistance it determines is not reasonable, practical, or feasible, or considers an abuse of the program.

**(2) Reconsideration.**

(a) Parties directly affected by an Employer-at-Injury Program decision may request reconsideration by submitting a written request to the division no later than 60 days after the date the decision was issued.

(b) The request for reconsideration must specify the reasons why the administrative review is requested ~~decision is appealed~~ and may include additional documentation.

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

(d) Reconsideration must precede a director's review under section (3) of this rule.

**(3) Director's review.**

(a) Parties affected by the reconsideration may request a director's review by submitting a written request to the division no later than 60 days after the date the reconsideration

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was issued. The request must specify the reasons why the decision is appealed and may include additional documentation.

(b) The director may require any affected party to provide information or to participate in the director's review. If the party requesting the director's review fails to participate without reasonable cause as determined by the director, the director may dismiss the review.

(c) The director's review decision will be issued in writing. The director's review decision is final and not subject to further review by any court or other administrative body.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

### **436-105-0500 Insurer Participation in the Employer-At-Injury Program**

#### **(1) Insurer participation.**

An insurer must be an active participant in providing re-employment assistance under the Employer-at-Injury Program with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

#### **(2) Notice of assistance available.**

The insurer must notify the worker and employer at injury in writing of the assistance available from the Employer-at-Injury Program. A notice must be issued:

- (a) Upon acceptance or reopening of a claim; and
- (b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

#### **(3) Required notice language.**

(a) The notice to the worker required by section (2) of this rule must be in bold type and contain the following language:

**The Employer-at-Injury Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through this program while your claim is open. Your employer may contact [insurer name and phone number].**

(b) The notice to the employer at injury required by section (2) of this rule must be in bold type and contain the following language:

**Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].**

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**(4) Insurer administration of program.**

The insurer must administer the Employer-at-Injury Program according to these rules. The insurer must assist an employer to:

- (a) ~~Get~~Obtain from the medical service provider a medical release from the medical service provider that meets the requirements of section (5) of this rule;
- (b) Identify a transitional work position:
  - (A) The transitional work position must be within the worker's injury-caused limitations and may be created through modification of the worker's regular work, job restructuring, assistive devices, worksite modification, reduced hours, or reassignment to another job;
  - (B) Unless the transitional work is skills building, the position must be within the employer's course and scope of trade or profession; and
  - (C) When skills building is the transitional work, the worker must agree in writing to take the class or course of instruction;
- (c) Process employer wage subsidy requests as specified in OAR 436-105-0520(2);
- (d) Make worksite modification purchases as specified in OAR 436-105-0520(3);
- (e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(4); and
- (f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

**(5) Medical releases.**

- (a) Medical releases are required for purposes of the Employer-at-Injury Program.
- (b) A medical release must be related to the compensable injury or occupational disease or, if the claim has not been accepted or denied, the claimed workers' compensation injury or occupational disease.
- (c) A medical release must:
  - (A) State the worker's specific current or projected restrictions; or
  - (B) Indicate the worker is not released to regular work and be accompanied by an approval of a job description that includes the job duties and physical demands required for the transitional work.
- (d) A medical release that releases the worker to part-time work or fewer hours than the worker normally worked before the injury must specify the worker's hourly restrictions.
- (e) A medical release must be dated and cover any period of time for which benefits are requested.
  - (A) The date a medical release is issued is considered the effective date if an effective date is not otherwise specified.

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(B) A medical release, and any restrictions it contains, remains in effect until another medical release is issued.

(C) If a medical release does not specify an end date or follow-up date and no subsequent medical release is issued, and there is no indication that the worker followed up with the medical service provider, the medical release is effective for no more than 30 days.

(f) An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time before submitting the reimbursement request.

**(6) Required documentation.**

The insurer must maintain all records and documentation of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program reimbursement request. All documentation must be prepared before reimbursement is requested from the division. The insurer must maintain the following information at an authorized claim processing location:

- (a) The worker's claim file;
- (b) Documentation from the worker's medical service provider that the worker is unable to perform regular work due to the injury and dated copies of all work releases from the worker's medical service provider;
- (c) Documentation of the transitional work that includes the start date, wage and hours, and a description of the job duties;
- (d) A legible copy of the worker's payroll records for the wage subsidy period.
  - (A) Payroll records must include:
    - (i) The date of payment;
    - (ii) The dates of work covered by the payment;
    - (iii) The rate or rates of pay;
    - (iv) Gross wages;
    - (v) Whether the worker is paid by the hour, shift, day, or week or on a salary, piece, or commission basis;
    - (vi) The regular hourly rate or rates of pay, the number of regular hours worked, and pay for those hours;
    - (vii) The number of overtime hours worked, if any, and pay for those hours; and
    - (viii) The overtime rate or rates of pay;
  - (B) Payroll records may be supplemented with documentation of how the worker's earnings were calculated for the wage subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates

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of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll records nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days;

(e) Documentation of the time of the appointment and hours and wages of transitional work for any days for which a partial day's reimbursement is requested after the worker is released for transitional work, or before returning from a medical appointment with a regular work release;

(f) A legible copy of proof of purchase, providing proof the item was ordered during the Employer-at-Injury Program period and proof of payment of the items for worksite modification purchases and Employer-at-Injury Program purchases;

(g) Documentation of the insurer's approval of worksite modifications;

(h) Documentation that payments for a home care worker or personal support worker were made to the Oregon Department of Human Services or Oregon Health Authority, if applicable;

(i) Written acceptance by the worker when skills building is the transitional work; and

(j) Documentation, including course title and curriculum for a class or course of instruction, when Employer-at Injury Program purchases are requested.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 1/29/15 as Admin. Order 15-054, eff. 3/1/15

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

#### **436-105-0510 Employer Eligibility**

To be eligible for the Employer-at-Injury Program, an employer must:

- (1) Maintain Oregon workers' compensation insurance coverage;
- (2) Be the employer at injury; and
- (3) Employ an eligible worker.

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

#### **436-105-0511 Worker Eligibility**

To be eligible for the Employer-at-Injury Program, a worker must:

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~~(1) H~~h~~h~~ave an Oregon workers' compensation injury or occupational disease claim at the time of the Employer-at-Injury Program, ~~and~~

~~(2) Adults in custody eligible for benefits~~ ~~Not be covered as an injured inmate~~ under ORS 655.505 to 655.555 and OAR 125-160 ~~are not eligible for the Employer-at-Injury Program.~~

Statutory authority: ORS 656.622, 656.726(4)

Statutes implemented: ORS 656.622

Hist: Amended and renumbered from OAR 436-105-0510 11/1/07 as WCD Admin. Order 07-065, eff. 12/1/07

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

### **436-105-0512 End of Eligibility**

Employer-at-Injury Program eligibility ends at the earliest of any of the following:

- (1) When the worker or employer no longer meets the eligibility provisions stated in OAR 436-105-0510 and 436-105-0511;
- (2) When the worker's claim is closed or denied;
- (3) When sanctions issued under OAR 436-105-0560 preclude eligibility;
- (4) When the insurer ends the Employer-at-Injury Program at any time while the worker's claim is open;
- (5) Two years after the original date of acceptance of a nondisabling claim; or
- (6) When ~~benefits under the~~ Preferred Worker Program benefits under OAR 436-110 begin for the same claim during the same claim opening, including premium exemption but excluding claims costs reimbursed under OAR 436-110-0330.

Statutory authority: ORS 656.622, 656.726(4) | Statutes implemented: ORS 656.622

Hist: Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

### **436-105-0520 Assistance Available from the Employer-at-Injury Program**

#### **(1) General provisions.**

- (a) The Employer-at-Injury Program may be used only once per worker per claim opening or request for reopening. If a nondisabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-at-Injury Program may be used again.
- (b) Assistance available includes wage subsidy, worksite modification, and purchases.
- (c) Any modification and other purchases must be ordered before the end of the Employer-at-Injury Program.

#### **(2) Wage subsidy.**

Wage subsidy provides reimbursement of 45 percent of the worker's gross wages for the wage subsidy period. Wage subsidy benefits are subject to the following conditions:

- (a) A wage subsidy may not exceed 66 workdays and must be completed within a 24-consecutive month period;

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- (b) A wage subsidy may not start or end with paid leave;
- (c) If the worker has hourly restrictions, reimbursable paid leave cannot exceed the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions will not be reimbursed; and
- (d) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time of up to 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

**(3) Worksite modification.**

- (a) Worksite modification is altering a worksite by renting, purchasing, modifying, or supplementing equipment to:
  - (A) Enable a worker to perform the transitional work within the worker's limitations that resulted in the worker's Employer-at-Injury Program eligibility;
  - (B) Prevent a worsening of the worker's compensable injury or occupational disease; or
  - (C) If the claim has not been accepted or denied, to prevent a worsening of the claimed workers' compensation injury or occupational disease.
- (b) For purposes of the Employer-at-Injury Program, a "worksite" is a primary work area available for a worker to use to perform the required job duties. The worksite may be the employer's, client's, or worker's premises, property, or equipment used to conduct business under the employer's or client's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job.
- (c) Worksite modification assistance is subject to the following conditions:
  - (A) The insurer must determine the appropriate worksite modifications for the worker;
  - (B) The insurer must document its reasons for approving the modifications; and
  - (C) Worksite modification items become the employer's property at the end of the Employer-at-Injury Program.

**(4) Employer-at-Injury Program purchases.**

Employer-at-Injury Program purchases are limited to:

- (a) Tuition, books, fees, and materials required for skills building or to meet the requirements of the transitional work position. Maximum expenditure is \$1,000. Tuition, books, fees, and required materials will be provided under the following conditions:
  - (A) The insurer must determine the class or course of instruction will help the worker enhance an existing skill or develop a new skill, and must document its decision; and
  - (B) The worker must begin participation in the class or course of instruction while eligible for the Employer-at-Injury Program;

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(b) Clothing required for the job, except clothing the employer normally provides. Clothing becomes the worker's property. Maximum expenditure is \$400; and

(c) Tools and equipment required for the worker to perform transitional work, including consumables required to support the functioning of the tools or equipment. These purchases become the employer's property.

**(5) Other conditions for worksite modifications and purchases.**

(a) Worksite modification and purchases of tools and equipment are limited to a combined maximum reimbursement of \$5,000.

(b) Extended warranties that are in addition to the standard or manufacturer's warranty are not reimbursable under the Employer-at-Injury Program.

(c) All modifications and purchases made by the employer in good faith are reimbursable, even if the worker refuses to return to work, or if the worker agreed to take part in training and then later refused to attend training.

Statutory authority: ORS 656.622, 656.726(4) | Statutes implemented: ORS 656.622

Hist: Amended 1/29/15 as Admin. Order 15-054, eff. 3/1/15

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

**436-105-0530 Employer-at-Injury Program Procedures for Concurrent Injuries**

(1) A worker is eligible for only one Employer-at-Injury Program at a time.

(2) When a worker in an Employer-at-Injury Program incurs a new compensable injury, transitional work for the first Employer-at-Injury Program is considered regular work for purposes of the second Employer-at-Injury Program.

(3) If the new injury makes the first Employer-at-Injury Program unsuitable, the worker may be eligible for a second Employer-at-Injury Program under the new injury.

(4) When the worker is no longer eligible for the second Employer-at-Injury Program, the first Employer-at-Injury Program may be resumed if the employer and worker still meet eligibility criteria under that claim.

Statutory authority: ORS 656.622, 656.726(4) | Statutes implemented: ORS 656.622

Hist: Amended 5/16/03 as WCD Admin. Order 03-057 eff. 6/8/03

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

**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.**

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The insurer is entitled to a program administrative cost of \$120 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 reimbursement request and required documentation form.**

~~The insurer must submit Form 2360, "Employer at Injury Program (EAIP) Reimbursement Request Form," to the division W within one year and 30 days from the end of the Employer-at-Injury Program, the insurer must submit to the division: The form is published with Bulletin 260, both of which are available on the division's website at [wcd.oregon.gov](http://wcd.oregon.gov).~~

(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](http://wcd.oregon.gov); and

(b) For EAIP purchases and worksite modifications:

(A) Documentation of the transitional work that includes the start date, wage and hours, and a description of the job duties;

(B) The corresponding medical release that the transitional work was based on;

(C) A legible copy of proof of any purchases showing the item was ordered during the Employer-at-Injury Program period and proof of payment of the items; and

(D) 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.

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(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 under 436-105-0540\(5\)\(b\)](#)~~(published with Bulletin 260, available on the division's website at [wcd.oregon.gov](http://wcd.oregon.gov))~~ 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 authority: ORS 656.622, 656.726(4) | Statutes implemented: ORS 656.622

Hist: Amended 10-3-2012 as Admin. Order 12-057, eff. 11-1-2012

Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17

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

**436-105-0550 Audits**

(1) Insurers and employers are subject to periodic program and fiscal audits by the director. All reimbursements are subject to subsequent audits, and may be disallowed on any of the grounds set forth in these rules. Disallowed reimbursements may be recovered by the director directly or from future reimbursements by way of offset. If the director finds upon audit that procedures that led to disallowed reimbursements are still being used, the director may withhold further reimbursements until corrections satisfactory to the director are made.

(2) An audit may include but not be limited to a review of the records required in OAR 436-105-0500(6).

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(3) When there is conflicting documentation, the director will use a preponderance of evidence standard to decide eligibility for reimbursement. If there is no clear preponderance, reimbursement will be denied.

(4) The director reserves the right to visit the worksite to determine compliance with these rules.

Statutory authority: ORS 656.455, 656.622, 656.726(4), 731.475  
 Statutes implemented: ORS 656.455, 656.622, 731.475  
 Hist: Amended 12-1-2009 as WCD Admin. Order 09-059, eff. 1-1-2010  
 Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17  
 See also the Index to Rule History: [http://wcd.oregon.gov/laws/Documents/Rule\\_history/436\\_history.pdf](http://wcd.oregon.gov/laws/Documents/Rule_history/436_history.pdf).

### **436-105-0560 Sanctions**

#### **(1) Penalties for false statement or report or misrepresentation.**

Any person who knowingly makes a false statement or misrepresentation to the director or an employee of the director for the purpose of obtaining any benefits or reimbursement from the Employer-at-Injury Program, or who knowingly misrepresents the amount of a payroll or knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

#### **(2) Reasons for sanction.**

Reasons for the director to sanction an insurer, self-insured employer, employer, or their representative include, but are not limited to:

- (a) Misrepresenting information in order to receive Employer-at-Injury Program assistance;
- (b) Making a serious error or omission that resulted in the director approving reimbursement in error;
- (c) Failing to respond to employer requests for assistance or failing to administer Employer-at-Injury Program assistance; or
- (d) Failing to comply with any condition in these rules.

#### **(3) Possible sanctions.**

The director may order one or more of the following sanctions:

- (a) Ordering the person to take corrective action within a specific period of time;
- (b) Ordering the person being sanctioned to repay the department all, or part, of the mon~~ey~~ies reimbursed, with or without interest at a rate set by the department. ~~The order may include the department's legal costs;~~
- (c) Ending the employer's eligibility to use the Employer-at-Injury Program for a specific period of time; or
- (d) Pursuing civil penalties under ORS 656.745 or criminal action against the party.

Statutory authority: ORS 656.622, 656.726(4) | Stat. Implemented: ORS 656.622, 656.745, 656.990  
 Hist: Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01  
 Amended 11/28/16 as WCD Admin. Order 16-056, eff. 1/1/17