# Agenda

# Rulemaking Advisory Committee

## Workers' Compensation Division Rules
## OAR 436-060, Claims Administration

| | |
|---|---|
| **Type of meeting:** | Rulemaking advisory committee |
| **Date, time, & place:** | Jan. 25, 2024, 9a.m. – 12p.m.<br>Room F (basement) Labor & Industries Building<br>350 Winter Street NE, Salem, Oregon<br>Microsoft Teams:<br>https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWIxMjllOTQtODM1Yy00OTg3LWE4MzItNzdlZTk0ODVlNTlj%40thread.v2/0?context=%7b%22Tid%22%3a%22aa3f6932-fa7c-47b4-a0ce-a598cad161cf%22%2c%22Oid%22%3a%22419bb41f-34a1-4d77-8afc-abd87db857e0%22%7d<br>Meeting ID: 213 514 035 008<br>Passcode: L5Ptr9<br>**Or call in (audio only)**<br>+1 503-446-4951,,364931168# United States, Portland<br>Phone Conference ID: 364 931 168# |
| **Facilitator:** | Summer Tucker and Marie Loiseau, Workers' Compensation Division |
| **9:00 to 9:10** | Welcome and introductions; meeting objectives |
| **9:10 to 10:30** | Discussion of issues – see attached issues document. |
| **10:30 to 10:45** | Break |
| **10:45 to 11:45** | Discussion of issues continued |
| **11:45 to 11:55** | Summing up – next steps – thank you! |

Attached: **Issues document**

# Oregon Administrative Rule Revision
# Chapter 436, Division 60

Issues Document
Rules Advisory Committee Meeting
January 25, 2024

**Issue 1**

**Rule:** OAR 436-060-0015(7) Notice of end of temporary disability benefits

**Issue:** Senate Bill 418 (2023) adds an exemption to the notice requirement in ORS 656.262(4)(j)(A) and OAR 436-060-0015(7). This exemption is currently not noted in the rule.

**Background:**
House Bill 4138 (2022) added a requirement to Oregon workers' compensation law (ORS 656.262(4)(j)(A)) that the insurer or self-insured employer may not end temporary disability benefits until written notice has been mailed or delivered to the worker and the worker's attorney, if the worker is represented. Following the 2022 legislative session, but before the introduction of Senate Bill 418 (2023), the division conducted rulemaking and added the notice requirement to OAR 436-060-0015, effective Jan. 1, 2024.

Senate Bill 418 (2023) specified that the House Bill 4138 notice requirement does not apply to temporary disability benefits paid under ORS 656.210(4) (temporary disability paid for medical appointment absences). Senate Bill 418 became effective on Jan. 1, 2024. However, OAR 436-060-0015(7) currently does not mention this exemption. To ensure insurers are aware there is an exemption to the notice requirement, the division believes it may be beneficial to clarify the rule.

**Options**
1) Amend OAR 436-060-0015(7) as follows:

   **(7) Notice of end of temporary disability benefits.**
   In addition to other requirements in OAR chapter 436, the insurer may not end temporary disability benefits until written notice has been mailed or delivered to the worker and the worker's attorney, if the worker is represented. The notice must state the reason that temporary disability benefits are no longer due and payable. This notice requirement does not apply to temporary disability benefits paid under ORS 656.210(4).

2) No changes.
3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 2**

**Rule:** OAR 436-060-0155(4) Jurisdiction over proceedings

**Issue:** The rule requires referring penalty issues to the Workers' Compensation Board (Board) if proceedings have been initiated at the Board. However, in some cases, referral to the Board is not necessary or appropriate.

**Background:**
Under ORS 656.262(11)(a) and OAR 436-060-0155(1), the director may require the insurer to pay a penalty to the worker, and a fee to the worker's attorney, if the insurer:

- Unreasonably delays or unreasonably refuses to pay compensation, attorney fees or costs.
- Unreasonably delays acceptance or denial of a claim.

The rule states that the director has exclusive jurisdiction when the assessment and payment of this penalty and attorney fee are the only issues of the proceedings between the parties, and requires the director to refer the issue to the Board if the director is aware of proceedings between the parties before Board.

However, referring the penalty issue to the Board is not needed or appropriate in all cases. For example, if the hearing has already been held in the other proceedings or if the matter is at board review, the penalty issue should not be referred. To ensure penalty issues are appropriately referred, the division is considering amending the rule to make referrals to the Board optional instead of mandatory.

**Options**
1) Amend OAR 436-060-0155(4) to state referrals to the Board are discretionary.
   **(4) Jurisdiction over proceedings.**
   The director has exclusive jurisdiction when the assessment and payment of penalties and attorney fees described in ORS 656.262(11) are the only issues of the proceedings between the parties. ~~The director will not issue an order assessing a penalty or attorney fee under this rule when the same parties have initiated proceedings before the board.~~

   (a) If the director receives a request for penalties and attorney fees under this rule, and is aware of proceedings between the parties before the board, the director may~~will~~ refer the request to the board.
   (b) If the director has not been made aware of the proceeding before the board and issues a penalty order that becomes final, the director's penalty will stand.

2) No change.
3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 3**

**Rule:** OAR 436-060-0170(1) Benefits paid a worker

**Issue:** The rule limits recovery of overpayments to methods specified in 656.268(14). However, ORS 656.268(14) does not limit overpayment recovery to only the methods specified in the statute. Additionally, the rule does not mention overpayment recoveries that are also permitted under ORS 656.268(12) and (13).

**Background:**
OAR 436-060-0170(1) describes when an overpayment of benefits may be recovered. Effective Jan. 1, 2024, the rule states:

> "An insurer may only recover overpayment of benefits paid to a worker as specified by ORS 656.268(14) and (16), unless authority is granted by an administrative law judge or the board."
>
> Note: House Bill 4138 (2022) added subsection (16) to ORS 656.268. See Oregon Laws 2022, Chapter 73.

Under ORS 656.268(14) and (16), insurers are permitted to recover overpayments of compensation payable to the worker. These subsections include the following:

- A limit on how much can be recovered from an individual temporary disability or permanent total disability payment, without prior authorization from the worker.
- A limit on how much can be recovered from a worker's permanent partial disability compensation.

The division has noted that the rule may be inadvertently narrower than ORS 656.268 because it includes the word "only." Although the statute provides limits on recovering overpayments from certain benefits, it does not address all possible ways an overpayment might be recovered. For example, instead of recovering from disability benefit payments, an insurer might recover an overpayment from a worker's mileage reimbursement. This method of recovery is not specifically mentioned in the statute, but is not prohibited. However, the "only" in the rule may be interpreted as saying that this overpayment cannot be recovered from mileage reimbursements.

Additionally, ORS 656.268 (12) and (13) also relate to overpayments. These subsections allow for adjustments in a notice of closure, and credits or offsets when benefits were obtained through fraud.

To ensure the rule accurately reflects the overpayment provisions of ORS 656.268, the division is considering clarifying the rule.

**Options**
1) Amend OAR 436-060-0170(1) to remove "only."

**436-060-0170 Recovery of Overpayment of Benefits**

(1) Benefits paid a worker.
An insurer may ~~only~~ recover overpayment of benefits paid to a worker as specified by ORS 656.268(14) and (16), unless authority is granted by an administrative law judge or the board.

2) Amend OAR 436-060-0170(1) to remove "only" and add citations of ORS 656.268.

**436-060-0170 Recovery of Overpayment of Benefits**

(2) Benefits paid a worker.
An insurer may ~~only~~ recover overpayment of benefits paid to a worker as specified by ORS 656.268(12), (13), (14), and (16), unless authority is granted by an administrative law judge or the board.

3) No change.
4) Other?

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 4**

**Rule:** OAR 436-060-0150(4) Timely payment of temporary disability

**Issue:** If approved by the insurer, employers are allowed to pay temporary disability on their payroll schedule. However, the rule does not allow an insurer to pay on the employer's payroll schedule. Additionally, the rule does not clearly state whether a self-insured employer may pay temporary disability on the self-insured employer's payroll schedule.

**Background:**
When a worker is entitled to temporary disability, ORS Chapter 656 and OAR Chapter 436 specify when payments must be made. After the first temporary disability payment, subsequent payments must be paid at least once each 14 days, under ORS 656.262(4)(a) and OAR 436-060-0150(4)(b).

In general, insurers are responsible for issuing temporary disability payments and must pay every 14 days. However, if approved by the insurer, the employer is allowed to issue temporary disability payments under OAR 436-060-0020(1). If an employer pays temporary disability, OAR 436-060-0150(4)(b)(A) indicates that the employer may make the payments concurrently with their payroll schedule. This option is only available for employers; insurers cannot pay on the employer's payroll schedule.

In previous rulemaking, a stakeholder recommended amending OAR 436-060-0150 to allow insurers to pay temporary disability on the employer's payroll schedule. Revising the rule as suggested could address the following issues:

- *Accuracy of temporary partial disability payments*
  If a worker is entitled to temporary partial disability (TPD), that benefit is calculated based on any post-injury wages they earn while performing modified work. However, in many claims, the period temporary disability is paid for is different than the employer's pay period. Division auditors have observed this can cause difficulty in calculating an accurate payment amount before it is due. For example:
    - A TPD payment for the 1st – 10th of the month is due on the 15th.
    - Worker timecards for the 1st – 15th aren't turned in until the 18th.
    - Since a payment is due on the 15th, but the post-injury wages aren't available before then, an estimate of the post-injury wages is used to determine how much TPD should be paid. In some cases, payment corrections are necessary if that estimate is incorrect.

- *Temporary disability and regular paychecks paid on different schedules*
  Currently, a worker who has returned to modified work but is not earning their full wages will receive a paycheck from their employer, and a separate temporary disability payment from the insurer. But, in many cases, the schedule for temporary disability payments is different than the employer's paycheck schedule. It may be more convenient and less confusing for a worker to receive their paycheck and their temporary disability payment around the same time, for the same period.

- *Self-insured employers*
  The current rule does not clearly state whether a self-insured employer may pay temporary disability on the self-insured's payroll schedule. Since a self-insured employer qualifies as an employer, it seems that a self-insured employer should be able to follow their payroll schedule. However, it may be beneficial to clarify the rule.

The division invites stakeholder input on the following options regarding allowing insurers to pay temporary disability on the employer's payroll schedule.

**Options:**

1) Amend OAR 436-060-0150(4) to allow insurers, self-insured employers, or employers to make temporary disability payments in accordance with the employer's payroll schedule.

   **(4) Timely payment of temporary disability.**
   Insurers must timely process the first payment of temporary disability compensation. The first payment of temporary disability on a claim must also include all temporary disability benefits due as of the date of payment, unless there is a reasonable basis to exclude those benefits at the time the payment issued. The director may assess a penalty under OAR 436-060-0200 against an insurer that does not make the first payment of temporary disability under the time frames of this section, or does not accurately report timeliness of first payment information.

   **… (subsection (a) is omitted)**
   (b) Subsequent payments of temporary disability benefits must ~~:~~
   ~~(A) B~~be made at least once each 14 days ~~, unless the employer is making payments under OAR 436-060-0020(1) and the payments are made concurrently with the payroll schedule of the employer;~~ and
   ~~(B) I~~include all benefits due for the period ending no more than seven days before the payment date. An insurer, self-insured employer, or employer making payments under OAR 436-060-0020(1) may pay temporary disability benefits in accordance with the employer's payroll schedule and pay period.

2) Amend OAR 436-060-0150 to include a requirement that written documentation of the employer's payroll schedule must be included in the insurer's claim file.

3) Amend OAR 436-060-0150 to require the insurer or self-insured employer to obtain the worker's permission to pay or stop paying temporary disability on the employer's payroll schedule.

4) No changes.
5) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Background for issues 5 - 9**

When there is a dispute over which employer or insurer is responsible for a worker's claim, the division can designate one of the insurers to temporarily process the claim (also referred to as designating a paying agent). The insurer selected to be the paying agent processes the claim until the responsibility dispute is resolved by the order of an administrative law judge.

The division can only designate a paying agent if all of the insurers agree the claim is compensable. Otherwise, the division cannot make a designation. The process and requirements for designating a paying agent are outlined in OAR 436-060-0180.

**Issue 5**

**Rule:** OAR 436-060-0180 (7) Failure to respond to request for clarification.

**Issue:** The timeframe for insurer response to the division's request for information may be longer than necessary.

**Background:**
If the division receives a request to designate a paying agent, the division must verify that all the insurers agree the claim is compensable. In cases where there is reasonable doubt about the claim's compensability, the division will request written clarification before selecting a paying agent. The insurer is required to respond within 21 days of the mailing date of the division's request, under OAR 436-060-0180(7).

Data collected by the division shows that insurers typically respond to a request for clarification within 13 days. Since the timeframe in rule is longer than the average response time, allowing 21 days for response may not be necessary. Additionally, a longer response timeframe may delay payment of the worker's benefits. A worker might not receive benefits until the paying agent has been designated.

The division proposes revising the response timeframe in the rule from 21 to 14 days. The timeframe of 14 days would be consistent with several other rules in chapter 436 regarding response to division requests. The division invites input from stakeholders on the following options.

**Options:**

1) Revise OAR 436-060-0180 to reduce the timeframe for response from 21 to 14 days.
   (7) Failure to respond to request for clarification.
   When notified by the director that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer must provide written clarification to the director, the worker, the other insurers involved and other interested parties within 14~~21~~ days of the mailing date of the notification. If an insurer fails to respond timely or provides an

inadequate response (e.g., failing to answer specific questions or provide requested documents), the director may assess a civil penalty under OAR 436-060-0200.

2) Reduce the timeframe for response from 21 to 14 days, and change the trigger for the start of the timeframe.

(7) Failure to respond to request for clarification.
When notified by the director that there is a reasonable doubt as to the status of the claim or intent of a denial, the insurer must provide written clarification to the director, the worker, the other insurers involved and other interested parties within 14~~21~~ days of the date of receipt~~mailing date~~ of the notification. If an insurer fails to respond timely or provides an inadequate response (e.g., failing to answer specific questions or provide requested documents), the director may assess a civil penalty under OAR 436-060-0200.

3) No change to the rule.
4) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 6**

**Rule:** OAR 436-060-0180(9) Factors for designation

**Issue:** The terminology used in this rule regarding permanent disability has changed.

**Background:**
To select a paying agent, OAR 436-060-0180(9) specifies that the division will designate the insurer with the lowest compensation, considering certain factors. One of the factors is the "rates per degree of permanent disability."

For dates of injury before Jan. 1, 2005, permanent partial disability (PPD) was calculated based on dollar rates per degrees of impairment (for example, $184.00 for 60 degrees). However, for dates of injury on or after Jan. 1, 2005, permanent partial disability is calculated based on the state average weekly wage. Since there are differences in how PPD is calculated depending on the date of injury, the division has identified that referring to the "rates per degree of permanent disability" is not accurate for dates of injury on or after Jan. 1, 2005.

**Options:**

1) Amend OAR 436-060-0180(9) as follows:

**(9) Factors for designation.**
Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, the director will issue an order designating a paying agent under ORS 656.307. The director will designate the insurer with the lowest compensation considering the following factors:

(a) The claim with the lowest temporary total disability rate;

(b) If the temporary total disability rates and the rates of permanent partial disability ~~rates per degree of permanent disability~~ are the same, the earliest claim;

(c) If there is no temporary disability or the temporary total disability rates are the same, but the rates of permanent partial disability~~rates per degree of permanent disability~~ are different, the claim with the lowest rate of permanent partial disability~~per degree of permanent disability~~;

2) No change to the rule.

3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 7**

**Rule:** OAR 436-060-0180 (9) Factors for designation

**Issue:** The division may select a paying agent based on which claim is the "earliest," but the rule does not define what "earliest claim" means.

**Background:**
To select a paying agent, OAR 436-060-0180(9) specifies that the division will designate the insurer with the lowest compensation, considering six factors. If no other factors apply, the last factor the division will consider is which insurer has the "earliest claim." This factor is only considered if the temporary total disability rates and rates per degree of permanent disability are the same for all the insurers.

The term "earliest claim" is not defined in the rule. Based on the statutory definition of "claim" in ORS 656.005(6) the earliest claim would be the earliest "…*written request for compensation from a subject worker or someone on the worker's behalf, or any compensable injury of which a subject employer has notice or knowledge."*

To ensure the rule is clear, the division is considering adding a definition of "earliest claim" to the rule, based on the statutory definition of "claim."

**Options:**
1) Amend OAR 436-060-0180(1) as follows:

(1) For the purpose of this rule:
**… (subsections a – c omitted)**
(d) "Earliest claim" means the earliest date of:
(i) A written request for compensation from a subject worker or someone on the worker's behalf; or
(ii) The subject employer had notice or knowledge of the compensable injury.

2) Other
3) No change.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 8**

**Rule:** OAR 436-060-0180(9) Factors for designation

**Issue:** The division may select a paying agent based on the "earliest claim." But in some cases, it may not be possible to determine which claim is the earliest.

**Background:**
OAR 436-060-0180(9)(b) specifies that the division will designate the insurer which has the "earliest claim" when other factors included under this section do not apply.

In some cases, the date of the "earliest claim" may be the same for all insurers involved in a responsibility dispute. For example, with an occupational disease claim, the worker may file a claim with multiple employers and insurers all on the same day. However, the rule does not state which insurer should be designated the paying agent if the "earliest claim" date is the same for all claims.

To address this issue, the division is considering adding rule language to state the division may consider other information if the "earliest claim" factor does not indicate which claim should be selected as the paying agent.

**Options:**

1) Revising OAR 436-060-0180 (9) as follows:

   (9) Factors for designation.

   Upon receipt of written acknowledgment from the insurers that the only issue is responsibility for an otherwise compensable injury claim, the director will issue an order designating a paying agent under ORS 656.307.

   (a) The director will designate the insurer with the lowest compensation considering the following factors:

      (A~~a~~) The claim with the lowest temporary total disability rate;
      (B~~b~~) If the temporary total disability rates and the rates per degree of permanent disability are the same, the earliest claim;
      (C~~c~~) If there is no temporary disability or the temporary total disability rates are the same, but the rates per degree of permanent disability are different, the claim with the lowest rate per degree of permanent disability;
      (D~~d~~) If one or more claims have disposed of benefits in accordance with ORS 656.236(1), the claim providing the lowest compensation not released by the claim disposition agreement;
      (E~~e~~) If one claim is under own motion jurisdiction, that claim, even if it is not the claim with the lowest temporary total disability rate; and

(F~~f~~) If more than one claim is under own motion jurisdiction, the own motion claim with the lowest temporary total disability rate.

(b) If the claim with the lowest compensation cannot be determined under subsection (a) of this section, the director may consider other information to designate a paying agent.

2) No changes.
3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 9**

**Rule:** OAR 436-060-0180(6)(c) Request for designation of a paying agent

**Issue:** The rule requires insurers to provide certain information when requesting designation of a paying agent. However, some of the information required for the division to designate a paying agent is not included in the rule.

**Background:**
When an insurer requests that the division designate a paying agent, the rule requires that the following information must be included:

- Identification of the compensable injuries or occupational diseases
- That the insurer is requesting designation of a paying agent under ORS 656.307
- That the insurer acknowledges the claim is otherwise compensable
- That responsibility is the only issue
- Identification of the specific claims or exposures involved by:
    - Employer
    - Insurer
    - Date of injury or specific period of exposure
    - Claim number, if assigned
- Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties
- Confirmation the worker has been advised of the actions being taken on the worker's claim.

The division identified that in addition to the list above, the following information is needed to select a paying agent, but is not included in the rule:

- The worker's average weekly wage, and
- The earliest date of the written request for compensation from a subject worker or someone on the worker's behalf, or the earliest date the subject employer had notice or knowledge.

To ensure that the division receives all the information needed to designate a paying agent and avoid delays, the division is considering amending the rule to update the list of required information.

**Options:**

1) Amend OAR 436-060-0180(6) to include the average weekly wage and earliest claim date.

    **(6) Request for designation of a paying agent.**

    (c) The insurer's written request must contain the following information:
        (A) Identification of the compensable injuries or occupational diseases;
        (B) That the insurer is requesting designation of a paying agent under ORS 656.307;

(C) That the insurer acknowledges the claim is otherwise compensable;
(D) That responsibility is the only issue;
(E) Identification of the specific claims or exposures involved by:
(i) Employer;
(ii) Insurer;
(iii) Date of injury or specific period of exposure; and
(iv) Claim number, if assigned;
(F) Acknowledgment that medical reports and other material pertinent to the injury have been provided to the other parties; ~~and~~
(G) Confirmation the worker has been advised of the actions being taken on the worker's claim;~~.~~
(H) The worker's average weekly wage, as calculated under OAR 436-060-0025; and
(I) The date of the written request for compensation from a subject worker or someone on the worker's behalf, or the date the subject employer had notice or knowledge of the compensable injury, whichever is earliest.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations**

**Issue 10**

**Rule:** OAR 436-060-0010 Employer Responsibilities

**Issue:** A worker may not be aware of their medical treatment rights when using their employer's on-site medical service provider to assess their injury.

**Background:**
Workers' compensation law prohibits employers from directing a worker to see a specific medical provider (also known as "direction of care"). However, ORS 656.260(21)(b)(B) allows for an employer to use an on-site medical service facility to assess the nature or extent of a worker's injury.

The division has recently received complaints regarding workers' employers directing them to use the on-site medical service facility beyond the initial assessment. The issues identified in these complaints were:

- The employer directing the worker to an on-site physical therapy facility on multiple occasions. There was delay in filing the claim, and the worker later required surgery for their injury-related condition.
- The employer directing the worker to multiple on-site providers, specifically, to an on-site emergency medical technician, an on-site physical therapy provider, and out-of-state telemedicine provider.

If an employer inappropriately directs a worker's medical care, or prevents a worker from filing a workers' compensation claim, the division has the authority to issue civil penalties. The division will also often provide education and training prior to issuing a civil penalty. However, these enforcement actions do not directly prevent direction of care issues from occurring. It is important that a worker understands their right to receive medical treatment from a health care provider of their choice, and that their employer is prohibited from directing them where to go for medical treatment.

To ensure workers are informed of their medical treatment rights, the division is considering implementing a rule requirement that the employer must provide the worker Form 3283 at the time an on-site assessment occurs. Form 3283 is the division publication "A Guide for Workers Recently Hurt on the Job", and includes information on how to file a claim, get medical treatment, and limitations on medical treatment.

The division invites stakeholders to provide input on the following options, or other rule revisions that could address the issue.

**Options**

1) Add a requirement to OAR 436-060-0010 that the employer must provide Form 3283 during the assessment of the nature or extent of an injury if all of the following conditions are met:
    - The worker informs the employer or employer's on-site medical service facility of a work related injury.

- The nature or extent of the worker's injury is assessed at the employer's medical service facility.

2) No change.

3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 11**

**Rule:** OAR 436-060-0030(1)(c) Rate of temporary partial disability

**Issue:** OAR 436-060-0035 provides that when a worker is partially disabled and eligible for supplemental disability, temporary partial disability is calculated under OAR 436-060-0030. However, OAR 436-060-0030 includes a provision that should not be applied when a worker is eligible for supplemental disability.

**Background:**
When a worker is temporarily disabled from work, they receive temporary total disability (TTD) if totally disabled, or temporary partial disability (TPD) payments if partially disabled.

- TTD payments are 66 2/3% of the worker's average weekly wage before the injury.

- TPD payments are calculated by reducing the TTD payment based on the percentage of wages lost after the injury. For example, if a worker loses 50 percent of their wages post-injury, their TPD payment is 50 percent of the TTD payment. The percentage of wages lost is determined based on the wages the worker receives after their injury (post-injury wages).

If a worker has multiple jobs at the time they are injured, they may also be eligible for supplemental disability benefits. Supplemental disability benefits (SDB) provide compensation for wages lost at a second job. For example, if a worker was injured at job A only, but loses wages from job A *and* job B because of the injury, they may be eligible for SDB.

When a worker is eligible for SDB, they may receive an increased TTD or TPD benefit.

- TTD payments are 66 2/3% of the worker's combined average weekly wage from the primary *and* the secondary jobs.

- TPD payments are calculated based on reducing the TTD payment based on the post-injury wages. The post-injury wages include wages from the primary *and* secondary jobs.

OAR 436-060-0035(7)(a) states that when a worker is eligible for SDB, the insurer must calculate the TPD due under OAR 436-060-0030 based on the wages from both the primary and secondary jobs. However, OAR 436-060-0030 contains a provision that should not be applied to SDB. Specifically, OAR 436-060-0030(1)(c) states:

> "Wages from a secondary employer must only be included in post-injury wages to the extent that the wages from the secondary employer post-injury exceed the wages from the secondary employer at the time of injury."

This rule indicates the post-injury wages used to calculate TPD should only include wages from a second job if they *exceed* the wages from the second job at the time of injury (i.e., if the worker

earned $100 at the second job at the time of injury, but earned $150 after the injury, the post-injury wages should only include $50).

If this provision was applied to an SDB eligible worker, they would be overpaid, since the TPD calculation would not account for all the post-injury wages the worker has received.

The language in (1)(c) has been in place since 1992, and was intended to limit when wages from a second job were included in TPD. This clarification occurred before the SDB program was established in 2002. Given that the rule predates the program, it appears that (1)(c) was not intended to apply when the worker is eligible for SDB. The division believes the rule may need to be clarified to avoid confusion.

**Options**

1) Specify that (1)(c) only applies if a worker is *not* eligible for supplemental temporary disability.

**436-060-0030 Payment of Temporary Partial Disability Compensation**
**(1) Rate of temporary partial disability.**
(a) To calculate the rate of temporary disability, the insurer must:
(A) Subtract the worker's post-injury wages from any kind of work from the worker's wages at the time of injury under OAR 436-060-0025;
(B) Divide the difference under paragraph (A) by the worker's wages at the time of injury under OAR 436-060-0025 to arrive at the percentage of loss of wages; and
(C) Multiply the worker's current rate of compensation for temporary total disability by the percentage of loss of wages in paragraph (B).

(b) As used in this rule "post-injury wages" means the sum of:
(A) The wages the worker could have earned by accepting a job offer, or actual wages earned, whichever is greater;
(B) Any unemployment benefits received; and
(C) Any wages received for paid leave, except wages paid in addition to temporary disability compensation with the worker's consent under OAR 436-060-0025(1);

(c) If a worker is not eligible for supplemental disability under OAR 436-060-0035, w~~W~~ages from a secondary employer must only be included in post-injury wages to the extent that the wages from the secondary employer post-injury exceed the wages from the secondary employer at the time of injury.

2) No change.
3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 12**

**Rule:** OAR 436-060-0170 Recovery of Overpayment of Benefits
OAR 436-060-0500 Reimbursement of Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

**Issue**: When supplemental disability benefits have been overpaid, the process for recovering the overpayment and correcting related reimbursements from the Workers' Benefit Fund is unclear.

**Background:**
When a worker is temporarily disabled, they may receive temporary disability payments for the time they lose from their job. Additionally, if the worker had multiple jobs when they were injured, they may also be eligible for supplemental temporary disability benefits (SDB). When eligible, the worker receives SDB to compensate for wages lost at secondary jobs. For example, if a worker was injured at job A, but loses wages from job A *and* job B, SDB provides additional compensation for wages lost from job B.

SDB is paid by either the insurer or an assigned processing administrator selected by the division. The insurer or assigned processing administrator is later reimbursed for the amount of SDB paid. The division issues these reimbursements from the Workers' Benefit Fund (WBF).

In some cases, the insurer or the assigned processing administrator may identify that SDB has been overpaid. Additionally, it is possible that the insurer or processing administrator was reimbursed for those overpayments from the WBF.

The division has identified two issues related to overpayments of SDB.

- OAR 436-060-0500 does not state what the insurer must do if they find an overpayment of SDB reimbursed from the WBF (i.e., when and how the overpayment must be repaid to the WBF.)

- Under OAR 436-060-0170, an insurer may recover an overpayment of benefits from a worker. However, SDB is paid by either the insurer or the assigned processing administrator. When an overpayment of SDB occurs, the rule is unclear in regards to which entity should recover the overpayment.

The division believes that revisions to OAR 436-060-0170 and 436-060-0500 would ensure the process for recovering overpayments and correcting related reimbursements is clear for all parties. The division invites input from stakeholders on the following options.

**Options**
1) Amend OAR 436-060-0170 to state the assigned processing administrator may request that the insurer recover an overpayment of supplemental disability benefits from the worker.

2) Amend OAR 436-060-0170 to state the assigned processing administrator may recover an overpayment of supplemental disability benefits from the worker.

3) Amend OAR 436-060-0500 to specify when and how to repay the Workers' Benefit Fund, if the insurer or assigned processing administrator discover an overpayment of SDB.

4) No change.

5) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 13**

**Rule:** OAR 436-060-0017 Release of Claim Documents

**Issue**: Stakeholders recommended expanding the disclosure requirements of OAR 436-060-0017(1).

**Background:**
OAR 436-060-0017(3) provides that insurers or service companies must provide copies of claim documents when requested by the worker and worker's attorney at times other than those provided under ORS 656.268 and OAR Chapter 438. OAR 436-060-0017(1) provides what records are considered "documents" that are subject to disclosure:

- Medical records, including any correspondence to and from medical experts who provide reports to the insurer
- Vocational records, including any correspondence to and from vocational experts who provide reports to the insurer
- Records of all compensation paid
- Payroll records
- Recorded statements
- Insurer generated records, excluding a claims examiner's generated file notes, such as documentation or justification concerning setting or adjusting reserves, claims management strategy, or any privileged communications
- All forms and notices on the claim required by ORS chapter 656 or OAR chapter 436;
- Notices of closure
- Electronic transmissions and correspondence between the insurer, service providers, worker, director, or board.

In 2021, this rule was revised to make minor changes to be more consistent with the Workers' Compensation Board's rules on disclosure of claim documents. In testimony, some stakeholders recommended that the division expand the list of documents subject to disclosure to include the following:

- Any correspondence to and from medical or vocational experts.
- Investigative statements and summaries
- Insurer generated records, *including* a claim examiner's generated file notes or claims management strategy.

Additionally, in October 2023, a stakeholder submitted a similar rule issue, recommending that the "…insurer should provide all correspondence relating to the claim with any exceptions listed."

The recommendations provided in testimony were not implemented in 2021, but the division preserved this issue for future rulemaking discussion. The division seeks stakeholder feedback on the following:

- Should the list of documents that must be disclosed be expanded?

- Are other clarifications needed regarding what documents must be disclosed?

**Options**
To be determined based on stakeholder feedback.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 14**

**Rule:** OAR 436-060-0135(2)(b)(E) Request to suspend compensation

**Issue:** Insurers must submit specific information to the division to request suspension of a worker's benefits, including the worker's initial request for compensation (e.g., Form 801, or Form 827). However, the rule does not clearly state that Forms 801 or 827 are required.

**Background:**
Under OAR 436-060-0135, if a worker refuses or fails to cooperate in an investigation of the claim, the insurer may request that the director suspend the worker's compensation by order. Under OAR 436-060-0135(2)(b)(E), the insurer is required to provide certain information that demonstrates the worker's failure to cooperate, as follows:

- That the insurer requests suspension of benefits under ORS 656.262(15) and OAR 436-060-0135.
- Documentation of the specific actions of the worker or worker's attorney that prompted the request.
- Any reasons given by the worker for failure to comply, or a statement that the worker has not given any reasons.
- A copy of the insurer's notice to the worker that an interview or deposition was scheduled, or of other investigation requirements.
- All other pertinent information, including, but not limited to, a copy of the claim for a new or omitted condition when that is what the insurer is investigating.

To complete a review of the suspension request, the division needs documentation of when the worker filed the claim. Claims are frequently filed by completing Form 801 (Report of Job Injury or Illness), or Form 827 (Worker's and Health Care Provider's Report for Workers' Compensation Claims). Form 801 (or alternatively, Form 827) must be submitted to the division when the insurer accepts or denies the claim. However, if a suspension is requested before a claim has been accepted or denied, Forms 801 and 827 have not yet been submitted to the division.

The rule requires submitting "all other pertinent information", which includes Forms 801 and 827. However, the rule does not clearly include those forms. In some cases, those documents are not submitted, and additional follow up is required before review of the suspension request can begin.

To ensure the rule is clear regarding what documents are required for a suspension request, the division is considering amending the rule to specifically require providing the Form 801, 827, or other written documentation of the worker's request for compensation.

**Options**
1) Amend OAR 436-060-0135(2)(b) as follows:

(E) The insurer's request must include the following information sufficient to show the worker's failure to cooperate:

(i) That the insurer requests suspension of benefits under ORS 656.262(15) and this rule;

(ii) Documentation of the specific actions of the worker or worker's attorney that prompted the request;

(iii) Any reasons given by the worker for failure to comply, or a statement that the worker has not given any reasons;

(iv) A copy of the notice required in (2)(a) of this rule; ~~and~~

(v) All written documentation of the worker's request to file a claim, including, but not limited to, a copy of Form 801 and Form 827; and

(vi) All other pertinent information, including, but not limited to, a copy of the claim for a new or omitted condition when that is what the insurer is investigating;

2) No change.
3) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 15**

**Rule:** OAR 436-060-0135(2)(c)(A) Request to suspend compensation

**Issue:** When notified by the division of a request to suspend benefits, the rule restricts the worker to responding by telephone or by mailing a letter.

**Background:**
Insurers may submit a request to the division that a worker's benefits be suspended under OAR 436-060-0135. When a suspension request is submitted, the division notifies the worker and their attorney that benefits will be suspended in five business days unless the worker or their attorney contacts the division and documents that the worker's failure to cooperate was reasonable.

The rule only allows response by telephone or mail, but the division considers other methods of response acceptable, such as faxing. The division believes the rule should be updated to include more options for responding to the division's notification.

**Options**
1) Amend OAR 436-060-0135 to remove specific methods of contacting the division.

(2) Request to suspend compensation.
The insurer may request for the director to suspend compensation by order when the worker refuses or fails to cooperate in an investigation of an initial claim for compensation, a claim for a new medical condition, a claim for an omitted medical condition, or an aggravation claim as required by ORS 656.262(14), under the following conditions:

**…(subsections a and b omitted)**

(c) After receiving the insurer's request to suspend benefits, the director will notify all parties that:
(A) The worker's benefits will be suspended in five business days unless:
(i) The worker or the worker's attorney contacts the division ~~by telephone or mails a letter documenting that~~and explains how the worker's failure to cooperate was reasonable; or
(ii) The insurer notifies the division that the worker is now cooperating;
(B) The insurer's obligation to accept or deny the claim within 60 days is suspended unless the insurer's request is filed with the division after the 60 days to accept or deny the claim has expired;

2) Amend OAR 436-060-0135 to add more options for contacting the division.

(2) Request to suspend compensation.
The insurer may request for the director to suspend compensation by order when the worker refuses or fails to cooperate in an investigation of an initial claim for compensation, a claim

for a new medical condition, a claim for an omitted medical condition, or an aggravation claim as required by ORS 656.262(14), under the following conditions:

**…(subsections a and b omitted)**

(c) After receiving the insurer's request to suspend benefits, the director will notify all parties that:

(A) The worker's benefits will be suspended in five business days unless:

(i) The worker or the worker's attorney contacts the division by telephone, ~~or~~ mail, fax, or in person ~~mails a letter documenting that~~and explains how the worker's failure to cooperate was reasonable; or

(ii) The insurer notifies the division that the worker is now cooperating;

(B) The insurer's obligation to accept or deny the claim within 60 days is suspended unless the insurer's request is filed with the division after the 60 days to accept or deny the claim has expired;

3) No change.
4) Other.

**Fiscal Impacts, including cost of compliance for small business:**
**How will adoption of this rule affect racial equity in Oregon?**
**Recommendations:**

**Issue 16**

**Rule:** OAR 436-060-0018(3)(d) Worker request for reclassification
OAR 436-060-0018(7)(a) Appeal of insurer's classification decision

**Issue:** When an insurer does not respond to a worker's request for reclassification, the worker is not notified that they may request review by the director, or of the time limit for requesting review.

**Background:**
Under OAR 436-060-0018, a worker may request that their claim be reclassified from nondisabling to disabling. Once the insurer receives the worker's request, the insurer must review and respond within 14 days. If the insurer denies the worker's request, they must mail a "Notice of Refusal to Reclassify."

Under OAR 436-060-0018(3)(d), if the insurer does not send any response, the worker may request review by the director under section (7) of the rule as if the insurer issued a Notice of Refusal to Reclassify. Section (7) of the rule provides that the worker must submit their request to the division within 60 days from the date of the insurer's notice.

If the insurer did not respond to the worker's request, the division considers the 60 day appeal period to start from the 14th day the insurer had to respond to the worker's request for reclassification.

A stakeholder requested that the rule be amended to allow the worker to request review by the director at any time, if the insurer does not respond to the worker's request for reclassification (rather than being limited to requesting within the 60 days noted above).

The division believes allowing a worker to request review without a time limit would conflict with other provisions of OAR 436-060-0018 that limit how long the worker can request reclassification of their claim to disabling. Section (3) of the rule provides that the worker may request reclassification if the claim has been classified as nondisabling for one year or less after the date of acceptance. Otherwise, section (5) provides that if a claim has been classified as nondisabling for at least one year after the date of acceptance, the worker must submit a claim for aggravation under ORS 656.273. Under ORS 656.273(4)(b), the claim for aggravation must be filed within five years of the date of injury.

Although allowing appeal without any time limit is not feasible, the division identified two issues related to the stakeholder's recommendation. First, if the insurer does not respond to the worker's request for reclassification, the worker may not be aware that they can request review by the director. Second, the worker may not be aware that there is a time limit to request review. The division seeks input from stakeholders on options for addressing those issues.

**Options**

1) Amend OAR 436-060-0018(7) to increase the time to request review in cases where the worker did not receive a Notice of Refusal to Reclassify.

2) Amend OAR 436-060-0018(7) to give the director discretion to review a worker's request if received after the 60 day appeal period elapses, but only in cases where the worker did not receive a Notice of Refusal to Reclassify.

3) No change.

4) Other.

**Issue 17**

**Rules:** OAR 436-060-0018, 0020, 0030, 0095, 0105, 0135, and 0137

**Issue:** The prescribed notice wording in these rules is not easily understood by workers.

**Background:**
In March 2022, the Workers' Compensation Division invited interested parties to an advisory committee that identified and discussed opportunities to simplify and streamline notices distributed to workers and employers. Committee members advised that revisions of the content and format of notice language that is prescribed by rule could make the notices easier to understand.

Currently, OAR chapter 436 prescribes language for 30 notices. Many of these notices include information on the worker's rights, processes for appeals, and contact information for questions or assistance. When a rule requires that notices to workers or employers include specific wording, it is critically important that the text helps readers understand their rights and responsibilities. Failure to meet a deadline, for example, can result in suspension or termination of a worker's benefits, or loss of appeal rights.

The division drafted revised wording for review by the rulemaking advisory committee. The intent is to simplify and clarify the prescribed wording without changing the meaning.

Current wording and revised wording are presented below. These paragraphs are available with marked edits in the appendix.

**OAR 436-060-0018(3)(b)(B)**

| **Current, Grade 12:** | **Draft, revised, Grade 6:** |
|---|---|
| **"If you disagree with this Notice of Refusal to Reclassify, you may appeal by contacting the Workers' Compensation Division within sixty (60) days of the mailing date of this notice. You may appeal by using Form 2943, "Worker Request for Claim Classification Review," available on the division's website at wcd.oregon.gov.**<br><br>**Send written appeals to the Workers' Compensation Division, Appellate Review Unit, PO Box 14480, Salem OR 97309-0405**<br><br>**Or fax to: 503-947-7794**<br><br>**Or hand-deliver to: Workers' Compensation Division, Appellate Review Unit, 350 Winter Street NE, 2nd Floor, Salem OR 97301**<br><br>**You may appeal by phone by calling the Appellate Review Unit at 503-947-7816. A member of the** | **If you disagree with this Notice of Refusal to Reclassify, you may appeal by contacting the Workers' Compensation Division. To appeal:**<br><br>- **Contact the division within sixty (60) days of the mailing date of this notice.**<br>- **You may use Form 2943, "Worker Request for Claim Classification Review," available on the division's website at wcd.oregon.gov.**<br>- **Request review in writing or by phone.**<br><br>**Send, hand deliver, or fax written requests to:**<br><br>**Workers' Compensation Division<br>Appellate Review Unit<br>350 Winter Street NE, 2nd Floor<br>PO Box 14480<br>Salem OR 97309-0405** |

| | |
|---|---|
| **Appellate Review Unit will complete and sign Form 2943 as the worker's designee and they will send a copy of the completed form to you, the insurer, and any attorneys involved in the claim.**<br><br>**If you do not appeal to the Workers' Compensation Division within 60 days of the mailing date of this notice, you will lose all rights to review of this decision. For assistance, you may call the Workers' Compensation Division at 503-947-7816, or the Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free)."** | **Fax: 503-947-7794**<br><br>**Or, call the Workers' Compensation Division at 503-947-7816. The division will complete and sign Form 2943 on your behalf, and will send copies of the completed form to you, the insurer, and any attorneys involved in the claim.**<br><br>**If you do not appeal to the Workers' Compensation Division within 60 days of the mailing date of this notice, you will lose all rights to appeal this decision.**<br><br>**For help, call:**<br><br>- **Workers' Compensation Division at 503-947-7816**<br>- **Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free)** |

**OAR 436-060-0018(6)(a)(C)**

| **Current, Grade 14:** | **Draft, revised, Grade 7:** |
|---|---|
| **"Notice to Worker: Your claim has been reclassified to nondisabling. Generally, this means your insurer concluded no disability payments are due and all of the following are true:**<br><br>**You were able to return to work at full wages on or before the fourth calendar day after leaving work or losing wages as a result of your injury.**<br><br>**You did not lose time or wages from work as a result of your injury on or after that fourth calendar day.**<br><br>**It appears you will not have any permanent disability as a result of your injury.**<br><br>**If you think there is a mistake in the classification of your claim as nondisabling, contact the insurer within one year of the date the insurer first accepted your claim and request reclassification.**<br><br>**If you request reclassification, the insurer must complete its review and send you its decision within 14 days of receiving your request. If you disagree with the insurer's decision, you have the right, within 60 days of the date of the insurer's notice, to request that the Workers' Compensation Division review your claim to determine if it was correctly classified. If the insurer does not respond to your request for reclassification within 14 days of receiving your request, you may ask the Workers' Compensation Division to review your claim as though the insurer refused to reclassify** | **Notice to worker:**<br><br>**We have changed your claim to nondisabling. Generally, this means no disability payments are due and all of the following are true:**<br><br>- **You were able to return to work with full wages by the fourth calendar day after leaving work or losing wages because of your injury.**<br><br>- **You did not lose time or wages from work because of your injury on or after that fourth calendar day.**<br><br>- **It appears you will not have any permanent disability because of your injury.**<br><br>**If you disagree that your claim is nondisabling, you may request that we change your claim to disabling.**<br><br>- **You must send us your request in writing within one year of the date we first accepted your claim.**<br><br>- **We must review and send you our decision within 14 days of receiving your request.**<br><br>**If you disagree with our decision, or we do not respond to your request, you have the right to appeal to the Workers' Compensation Division.** |

| | |
|---|---|
| **your claim. For assistance, you may call the Workers' Compensation Division at 503-947-7816, or the Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free)."** | **To appeal:**<br><br>- **You must ask the division to review your claim within 60 days of the date we mailed you our decision.**<br><br>- **If we did not respond within 14 days of receiving your request, ask the division to review your claim as if we refused to change your claim.**<br><br>**For help, call:**<br><br>- **Workers' Compensation Division at 503-947-7816**<br>- **Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free)** |

**OAR 436-060-0020(5)(b)**

| **Current, Grade 8:** | **Draft, revised, Grade 6:** |
|---|---|
| **"You must attend this appointment. If there is any reason you cannot attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice, as provided by ORS 656.262(4)(e)."** | **You must attend this appointment. If there is any reason you can't attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice under Oregon law.***<br><br>**If you have any questions you may call:**<br><br>- **[Insurer] at 888-888-8888**<br>- **Workers' Compensation Division at 1-800-452-0288**<br>- **Ombuds Office for Oregon Workers at 1-800-927-1271**<br><br>***Oregon Revised Statute 656.262(4)(e)** |

**OAR 436-060-0020(5)(d)**

| **Current, Grade 12:** | **Draft, revised, Grade 8:** |
|---|---|
| **"Since you missed a regular appointment with your doctor, we arranged a new appointment. We notified you of the new appointment by certified mail and warned you that your benefits would be suspended if you failed to attend. Since you failed to attend the new appointment, your temporary disability benefits have been suspended. In order to resume your benefits, you must schedule and attend an appointment with your doctor who must verify your continued inability to work."** | **We have suspended your temporary disability benefits, because you missed a regular appointment with your doctor.**<br><br>**When we arranged a new appointment for [Date], we notified you in a letter that was sent by certified mail.**<br><br>**The letter warned you that we would suspend your benefits if you did not attend, and you did not attend the new appointment.**<br><br>**To resume your benefits:** |

| | |
|---|---|
| | **- You must schedule and attend an appointment with your doctor, and<br>- Your doctor must verify that you are still unable to work.** |

**OAR 436-060-0030(3)(c)(G)**

| **Current, Grade 14:** | **Draft, revised, Grade 4:** |
|---|---|
| **"If you refuse this offer of work for any of the reasons listed in this notice, you should write to the insurer or employer and tell them your reasons for refusing the job. If the insurer reduces or stops your temporary total disability and you disagree with that action, you have the right to request a hearing. To request a hearing you must send a letter objecting to the insurer's actions to the Worker's Compensation Board, 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1282."** | **If you refuse this offer of work for any of the reasons listed in this notice, you should:**<br><br>**- Write to the insurer or employer, and<br>- Tell them your reasons for refusing the job.**<br><br>**If the insurer reduces or stops your temporary total disability, you may appeal by requesting a hearing. To request a hearing, send a letter objecting to the insurer's actions to:**<br><br>**Worker's Compensation Board<br>2601 25th Street SE, Suite 150,<br>Salem OR 97302-1282** |

**OAR 436-060-0095(3)(d)(I)**

| **Current, Grade 13:** | **Draft, revised, Grade 7:** |
|---|---|
| **"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend and do not have a good reason for not attending, or you fail to cooperate with the examination, your workers' compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a $100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits.**<br><br>**If you object to the location of this appointment you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombuds Office for Oregon Workers at 1-800-927-1271."** | **You must attend this examination.**<br><br>**If there is any reason you can't attend, you must tell us as soon as possible before the date of the examination.**<br><br>**If you disagree with the location of this appointment, you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice.**<br><br>**Your workers' compensation benefits may be suspended under Oregon laws and rules* if you:**<br><br>**- Do not attend the examination,<br>- Do not have a good reason for not attending the examination, or<br>- Do not cooperate with the examination.**<br><br>**You may be charged a $100 penalty if you do not attend the examination without good reason or if you do not notify the insurer before the examination. The penalty is taken out of future benefits.**<br><br>**If you have any questions you may call:** |

- **[Insurer at 888-888-8888]**
- **Workers' Compensation Division at 1-800-452-0288 or 503-947-7585**
- **Ombuds Office for Oregon Workers at 1-800-927-1271.**

***Oregon Revised Statute 656.325 and Oregon Administrative Rule 436-060**

**OAR 436-060-0095(6)(j)**

| **Current, Grade 11:** | **Draft, revised, Grade 7:** |
|---|---|
| **"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date this request was mailed or personally served on you. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized."** | **Notice to worker:**<br><br>**If the Workers' Compensation Division grants this request, you may lose all or part of current or future benefits.**<br><br>**If you think this request to suspend your compensation is wrong, write to the Workers' Compensation Division immediately.**<br><br>- **Your letter must be mailed within 10 days of the date this request was mailed or personally served on you.**<br>- **Address your letter to:**<br><br>**Workers' Compensation Division**<br>**350 Winter Street NE**<br>**PO Box 14480**<br>**Salem OR 97309-0405**<br><br>**If you have any questions, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585.** |

**OAR 436-060-0105(2)(d)**

| **Current, Grade "post-graduate":** | **Draft, revised, Grade 7:** |
|---|---|
| **"If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060."** | **If you continue this inappropriate conduct after the above date:**<br><br>- **We will ask that your workers' compensation benefits be suspended, and**<br>- **Your permanent disability award, if any, may be reduced under ORS 656.325 and OAR 436-060.** |

**OAR 436-060-0105(4)(b)(G)**

| Current, Grade 16: | Draft, revised, Grade 7: |
|---|---|
| **"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date this request was mailed or personally served on you. If the division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."** | **Notice to worker:**<br><br>**If the Workers' Compensation Division decides to suspend your benefits and you do not correct your unacceptable actions, or show us a good reason why they are acceptable, we will close your claim.**<br><br>**If you think this request to suspend your benefits is wrong, write to the Workers' Compensation Division immediately.**<br><br>**- Your letter must be mailed within 10 days of the date this request was mailed or personally served on you.**<br>**- Address your letter to:**<br><br>**Workers' Compensation Division<br>350 Winter Street NE<br>PO Box 14480<br>Salem OR 97309-0405**<br><br>**If you have any questions, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585.** |

**OAR 436-060-0105(5)(a)(D)**

| Current, Grade 11: | Draft, revised, Grade 6: |
|---|---|
| **"Notice to worker: If you think this request to reduce your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the mailing date of this request. If the division grants this request, you may lose all or part of your benefits."** | **Notice to worker:**<br><br>**If the Workers' Compensation Division grants this request, you may lose all or part of your benefits.**<br><br>**If you think this request to reduce your benefits is wrong, write to the Workers' Compensation Division immediately.**<br><br>**- Your letter must be mailed within 10 days of the date this request was mailed or personally served on you.**<br>**- Address your letter to:**<br><br>**Workers' Compensation Division<br>350 Winter Street NE<br>PO Box 14480<br>Salem OR 97309-0405** |

| | |
|---|---|
| | **If you have any questions, you may call Workers' Compensation Division at 1-800-452-0288 or 503-947-7585.** |

**OAR 436-060-0135(2)(a)(A)(iv)**

| **Current, Grade "post-graduate":** | **Draft, revised, Grade 7:** |
|---|---|
| **"The workers' compensation law requires injured workers to cooperate and assist the insurer or self-insured employer in the investigation of claims for compensation. Injured workers are required to submit to and fully cooperate with personal and telephonic interviews and other formal or informal information gathering techniques. If you do not reasonably cooperate with the investigation of this claim, payment of your compensation benefits may be suspended and your claim may be denied in accordance with ORS 656.262 and OAR 436-060."** | **The law requires you to cooperate and assist in the investigation of your workers' compensation claim. This means you must take part and fully cooperate with:**<br><br>**- Personal and telephone interviews, and**<br>**- Other formal or informal information gathering techniques.**<br><br>**If you do not reasonably cooperate:**<br><br>**- Your workers' compensation benefit may be suspended, and**<br>**- Your claim may be denied under ORS 656.262 and OAR 436-060.** |

**OAR 436-060-0137(3)(a)(G)**

| **Current, Grade 13:** | **Draft, revised, Grade 6:** |
|---|---|
| **"You must attend this vocational evaluation. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the evaluation. If you do not attend or do not cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.206 and OAR 436-060. If you have questions about your rights or responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or the Ombuds Office for Oregon Workers at 1-800-927-1271."** | **You must attend this evaluation.**<br><br>**If there is any reason you cannot attend, you must tell us as soon as possible before the date of the evaluation.**<br><br>**Your workers' compensation benefits may be suspended under Oregon laws and rules* if you:**<br><br>**- Do not attend the evaluation,**<br>**- Do not cooperate with the evaluation, or**<br>**- Do not have good reason for not attending.**<br><br>**If you have any questions you may call:**<br><br>**- [Insurer] at 888-888-8888**<br>**- Workers' Compensation Division at 1-800-452-0288 or 503-947-7585**<br>**- Ombuds Office for Oregon Workers at 1-800-927-1271.**<br><br>***Oregon Revised Statute 656.206 and Oregon Administrative Rule 436-060** |

**OAR 436-060-0137(5)(b)(I)**

| Current, Grade 12: | Draft, revised, Grade 6: |
|---|---|
| **"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405. Your letter must be mailed within 10 days of the date this request was mailed or personally served on you. If the division grants this request, you may lose all or part of your benefits."** | **Notice to worker:**<br><br>**If the Workers' Compensation Division grants this request, you may lose all or part of your benefits.**<br><br>**If you think this request to suspend your compensation is wrong, write to the Workers' Compensation Division immediately.**<br><br>- **Your letter must be mailed within 10 days of the date this request was mailed or personally served on you.**<br>- **Address your letter to:**<br><br>**Workers' Compensation Division**<br>**350 Winter Street NE**<br>**PO Box 14480**<br>**Salem OR 97309-0405**<br><br>**If you have any questions, you may call:**<br>- **[Insurer at 888-888-8888]**<br>- **Workers' Compensation Division at 1-800-452-0288 or 503-947-7585**<br>- **Ombuds Office for Oregon Workers at 1-800-927-1271.** |

## Options:

1) Revise notices (with additional edits based on advisory committee input)
2) Do not revise notices
3) Other

**Fiscal Impacts, including cost of compliance for small business:**
Insurers and self-insured employers may incur some near-term costs to revise letters and associated computer programs and templates. The agency does not have data that would allow projection of overall costs, but invites input from claims processors.

**How will adoption of this rule affect racial equity in Oregon?**
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 American 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, streamlining of communications may benefit 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.

**Recommendations:**

## Housekeeping issues

**OAR 436-060-0005, 0015, 0020, 0170**
Updating citations that reference Oregon Laws 2022.

**OAR 436-060-0005(16)**
Correcting a citation error. The rule currently states the definition of "regular wage" is in section (18) of the rule, when it is in section (19).

## Appendix

### Revised mandatory notice wording with marked edits

OAR 436-060-0018(3)(b)(B)

**"If you disagree with this Notice of Refusal to Reclassify, you may appeal by contacting the Workers' Compensation Division. To appeal:**

- **Contact the division within sixty (60) days of the mailing date of this notice.**
- **You may ~~appeal by using~~use Form 2943, "Worker Request for Claim Classification Review," available on the division's website at wcd.oregon.gov.**
- **Request review in writing or by phone.**

**Send, hand deliver, or fax written appeals to ~~the~~ :**

**Workers' Compensation Division**
**~~,~~ Appellate Review Unit~~,~~**
**350 Winter Street NE, 2nd Floor**
**PO Box 14480**
**~~,~~Salem OR 97309-0405**
**~~Or fax to~~Fax: 503-947-7794**

**Or ~~hand-deliver to:~~, call the Workers' Compensation Division~~, Appellate Review Unit, 350 Winter Street NE, 2nd Floor, Salem OR 97301~~**

**~~You may appeal by phone by calling the Appellate Review Unit~~ at 503-947-7816. ~~A member of the Appellate Review Unit~~The division will complete and sign Form 2943 ~~as the worker's designee~~on your behalf, and ~~they~~ will send ~~a copy~~copies of the completed form to you, the insurer, and any attorneys involved in the claim.**

**If you do not appeal to the Workers' Compensation Division within 60 days of the mailing date of this notice, you will lose all rights to ~~review of~~appeal this decision. ~~For assistance, you may call the Workers' Compensation Division at 503-947-7816, or the Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free)."~~**

**For help, call:**

- **Workers' Compensation Division at 503-947-7816**
- **Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free)**

OAR 436-060-0018(6)(a)(C)

**~~"~~Notice to ~~Worker: Your~~ worker:**

**We have changed your claim ~~has been reclassified~~ to nondisabling. Generally, this means ~~your insurer concluded~~ no disability payments are due and all of the following are true:**

- **You were able to return to work ~~at~~with full wages ~~on or before~~by the fourth calendar day after leaving work or losing wages ~~as a result~~because of your injury.**
- **You did not lose time or wages from work ~~as a result~~because of your injury on or after that fourth calendar day.**
- **It appears you will not have any permanent disability ~~as a result~~because of your injury.**

**If you ~~think there~~disagree that your claim is ~~a mistake in the classification of your claim as~~ nondisabling, ~~contact the insurer~~you may request that we change your claim to disabling.**

- **You must send us your request in writing within one year of the date ~~the insurer~~we first accepted your claim ~~and request reclassification~~.**
- **~~If you request reclassification, the insurer must complete its~~We must review and send you ~~its~~our decision within 14 days of receiving your request.**

**If you disagree with ~~the insurer's~~our decision, or we do not respond to your request, you have the right~~,~~ to appeal to the Workers' Compensation Division.**

**To appeal:**

- **You must ask the division to review your claim within 60 days of the date ~~of the insurer's notice, to request that the Workers' Compensation Division review your claim to determine if it was correctly classified. If the insurer does not respond to your request for reclassification~~we mailed you our decision.**
- **If we did not respond within 14 days of receiving your request, ~~you may~~ ask the ~~Workers' Compensation Division~~division to review your claim as ~~though the insurer~~if we refused to ~~reclassify~~change your claim.**

**For ~~assistance, you may~~help, call ~~the~~ :**

- **Workers' Compensation Division at 503-947-7816**
- **~~, or the~~ Ombuds Office for Oregon Workers at 503-378-3351 or 800-927-1271 (toll-free~~).”~~)**

OAR 436-060-0020(5)(b)

**"You must attend this appointment. If there is any reason you ~~cannot~~can't attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice~~, as provided by ORS 656.262(4)(e)."~~ under Oregon law.***

**If you have any questions you may call:**

- **[Insurer] at 888-888-8888**
- **Workers' Compensation Division at 1-800-452-0288**
- **Ombuds Office for Oregon Workers at 1-800-927-1271**

***Oregon Revised Statute 656.262(4)(e)**

OAR 436-060-0020(5)(d)

**"~~Since~~We have suspended your temporary disability benefits, because you missed a regular appointment with your doctor~~.~~.**

**When we arranged a new appointment~~. We~~ for [Date], we notified you ~~of the new appointment~~in a letter that was sent by certified mail ~~and~~.**

**The letter warned you that ~~your benefits~~we would ~~be suspended~~ suspend your benefits if you ~~failed to~~did not attend~~. Since~~, and you ~~failed to~~did not attend the new appointment~~, your temporary disability benefits have been suspended. In order to~~.**

**To resume your benefits~~, you~~:**

- **You must schedule and attend an appointment with your doctor ~~who~~, and**
- **Your doctor must verify ~~your continued inability~~that you are still unable to work~~."~~.**

OAR 436-060-0030(3)(c)(G)

**~~"~~If you refuse this offer of work for any of the reasons listed in this notice, you should ~~write~~:**

- **Write to the insurer or employer, and ~~tell~~**
- **Tell them your reasons for refusing the job.**

**If the insurer reduces or stops your temporary total disability ~~and~~, you ~~disagree with that action, you have the right to~~may appeal by requesting a hearing. To request a hearing ~~you must~~, send a letter objecting to the insurer's actions to ~~the~~ :**

**Worker's Compensation Board**
**~~,~~2601 25th Street SE, Suite 150,**
**Salem~~, Oregon~~ OR 97302-1282~~."~~**

OAR 436-060-0095(3)(d)(I)

**~~"~~You must attend this examination.**

**If there is any reason you ~~cannot~~can't attend, you must tell ~~the insurer~~us as soon as possible before the date of the examination.**

**If you ~~fail to attend and do not have a good reason for not attending, or you fail to cooperate~~disagree with the ~~examination, your workers' compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060. You may be charged a $100 penalty if you fail to attend without a good reason or if you fail to notify the insurer before the examination. The penalty is taken out of future benefits.~~**

**~~If you object to the~~ location of this appointment, you must contact the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 within six business days of the mailing date of this notice. ~~If you have questions about your rights or~~**

~~responsibilities, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585 or the Ombuds Office for Oregon Workers at 1-800-927-1271."~~

Your workers' compensation benefits may be suspended under Oregon laws and rules* if you:

- Do not attend the examination,
- Do not have a good reason for not attending the examination, or
- Do not cooperate with the examination.

You may be charged a $100 penalty if you do not attend the examination without good reason or if you do not notify the insurer before the examination. The penalty is taken out of future benefits.

If you have any questions you may call:

- [Insurer at 888-888-8888]
- Workers' Compensation Division at 1-800-452-0288 or 503-947-7585
- Ombuds Office for Oregon Workers at 1-800-927-1271.

*Oregon Revised Statute 656.325 and Oregon Administrative Rule 436-060

OAR 436-060-0095(6)(j)

"**Notice to worker:**

If the Workers' Compensation Division grants this request, you may lose all or part of current or future benefits.

**If you think this request to suspend your compensation is wrong,** ~~you should immediately~~ **write to the Workers' Compensation Division**~~, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.~~ immediately.

- **Your letter must be mailed within 10 days of the date this request was mailed or personally served on you.** ~~If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized."~~
- Address your letter to:

  Workers' Compensation Division
  350 Winter Street NE
  PO Box 14480
  Salem OR 97309-0405

If you have any questions, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585.

OAR 436-060-0105(2)(d)

**"If you continue ~~to do insanitary or injurious acts beyond~~this inappropriate conduct after the above date ~~in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we~~:**

- **We will ~~request the suspension of~~ask that your workers' compensation benefits~~. In addition, you may also have any~~ be suspended, and**
- **Your permanent disability award, if any, may be reduced ~~in accordance with~~under ORS 656.325 and OAR 436-060~~."~~.**

OAR 436-060-0105(4)(b)(G)

**"Notice to worker:**

**If the Workers' Compensation Division decides to suspend your benefits and you do not correct your unacceptable actions, or show us a good reason why they are acceptable, we will close your claim.**

**If you think this request to suspend your ~~compensation~~benefits is wrong, ~~you should immediately~~ write to the Workers' Compensation Division~~, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.~~ immediately.**

- **Your letter must be mailed within 10 days of the date this request was mailed or personally served on you. ~~If the division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."~~**
- **Address your letter to:**

  **Workers' Compensation Division**
  **350 Winter Street NE**
  **PO Box 14480**
  **Salem OR 97309-0405**

**If you have any questions, you may call the Workers' Compensation Division at 1-800-452-0288 or 503-947-7585.**

OAR 436-060-0105(5)(a)(D)

**"Notice to worker:**

**If the Workers' Compensation Division grants this request, you may lose all or part of your benefits.**

**If you think this request to reduce your ~~compensation~~benefits is wrong, ~~you should immediately~~ write to the Workers' Compensation Division~~, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.~~ immediately.**

- **Your letter must be mailed within 10 days of the ~~mailing~~ date ~~of~~ this request~~. If the division grants this request,~~ was mailed or personally served on you ~~may lose all or part of your benefits."~~.**
- **Address your letter to:**

  **Workers' Compensation Division**
  **350 Winter Street NE**
  **PO Box 14480**
  **Salem OR 97309-0405**

**If you have any questions, you may call Workers' Compensation Division at 1-800-452-0288 or 503-947-7585.**

OAR 436-060-0135(2)(a)(A)(iv)

**"The ~~workers' compensation~~ law requires ~~injured workers~~ you to cooperate and assist ~~the insurer or self-insured employer~~ in the investigation of ~~claims for~~your workers' compensation~~. Injured workers are required to submit to~~ claim. This means you must take part and fully cooperate with ~~personal~~:**

- **Personal and ~~telephonic~~telephone interviews, and ~~other~~**
- **Other formal or informal information gathering techniques.**

**If you do not reasonably cooperate ~~with the investigation of this claim, payment of your~~:**

- **Your workers' compensation ~~benefits~~benefit may be suspended, and ~~your~~**
- **Your claim may be denied ~~in accordance with~~under ORS 656.262 and OAR 436-060~~."~~.**

OAR 436-060-0137(3)(a)(G)

**"You must attend this ~~vocational~~ evaluation.**

**If there is any reason you cannot attend, you must tell ~~the insurer~~us as soon as possible before the date of the evaluation. ~~If~~**

**Your workers' compensation benefits may be suspended under Oregon laws and rules* if you ~~do~~:**

- **Do not attend ~~or do~~the evaluation,**
- **Do not cooperate with the evaluation, or ~~do~~**
- **Do not have ~~a~~ good reason for not attending~~, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.206 and OAR 436-060. .~~**

**If you have any questions ~~about your rights or responsibilities,~~ you may call ~~the~~ :**

- **[Insurer] at 888-888-8888**
- **Workers' Compensation Division at 1-800-452-0288 or ~~the~~ 503-947-7585**
- **Ombuds Office for Oregon Workers at 1-800-927-1271~~."~~.**

***Oregon Revised Statute 656.206 and Oregon Administrative Rule 436-060**

**"Notice to worker:**

OAR 436-060-0137(5)(b)(I)

**If the Workers' Compensation Division grants this request, you may lose all or part of your benefits.**

**If you think this request to suspend your compensation is wrong, ~~you should immediately~~ write to the Workers' Compensation Division~~, 350 Winter Street NE, PO Box 14480, Salem, Oregon 97309-0405.~~ immediately.**

- **Your letter must be mailed within 10 days of the date this request was mailed or personally served on you. ~~If the division grants this request, you may lose all or part of your benefits."~~**
- **Address your letter to:**

**Workers' Compensation Division**

**350 Winter Street NE**

**PO Box 14480**

**Salem OR 97309-0405**

**If you have any questions, you may call:**

- **[Insurer at 888-888-8888]**
- **Workers' Compensation Division at 1-800-452-0288 or 503-947-7585**
- **Ombuds Office for Oregon Workers at 1-800-927-1271.**