

**ADMINISTRATIVE ORDER NO. 02-063  
EFFECTIVE DECEMBER 11, 2002**

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 105**

**EMPLOYER-AT-INJURY PROGRAM TEMPORARY RULES**

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EMPLOYER-AT-INJURY PROGRAM TEMPORARY RULES

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EXHIBIT "A"  
OREGON ADMINISTRATIVE RULES  
CHAPTER 436, DIVISION 105

**436-105-0003 Applicability of Rules**

(1) These rules apply to all individual Employer-at-Injury Programs which began on or after [the effective date of these rules] **October 1, 2001**.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

**Stat. Auth.:** ORS 656.622, 656.726(4)

**Stats. Implemented:** ORS 656.622

**Hist:** Adopted 8/14/01 as WCD Admin. Order 01-057, eff. 10/1/01

**Amended 12/11/02 as WCD Admin. Order 02-063 eff. 12/11/02 (Temp)**

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

(1) When the employer-at-injury requests assistance, the insurer shall be an active participant in providing reemployment assistance. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

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

(a) Upon acceptance or reopening of a non-disabling or disabling 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) The notices of Employer-at-Injury Program assistance shall contain the following language:

(a) The notice to the worker shall appear in bold type as follows:

**The Reemployment Assistance 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 the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].**

(b) The notice to the employer-at-injury shall appear in bold type as follows:

**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) The insurer shall respond to the employer's request for assistance and administer the Employer-at-Injury Program according to these rules. The insurer shall assist the employer to:

- (a) Obtain a medical release citing the injury-caused restrictions which prevent the worker from performing regular employment from the medical service provider;
  - (b) Identify a transitional work position;
  - (c) Process employer Wage Subsidy requests specified in OAR 436-105-0520(1);
  - (d) Make Worksite Modification purchases as specified in OAR 436-105-0520(2);
  - (e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3);
- and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) The insurer may use the Employer-at-Injury Program upon establishing the worker and employer meet the eligibility criteria stated in OAR 436-105-0510(1) and (2). The insurer must possess all medical releases citing restrictions from the medical service provider. For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must state the worker's specific injury-caused restrictions, and must be dated. The date the medical release is issued by the medical provider is considered the effective date if an effective date is not otherwise specified;

(b) For Employer-at-Injury Program purposes, a medical release for "light work," "light duty," or "modified work," without other specific restrictions, are not considered restrictions unless the medical service provider references the Dictionary of Occupational Titles standards;

(c) A medical release must cover any period of time for which benefits are requested, except as provided in subsection (f) of this rule;

(d) A medical release with no specific end date expires in 30 days;

(e) A medical release with a specific end date or follow-up medical appointment date expires on the end date, or the follow-up appointment date, if the worker does not return to the medical service provider for a follow-up appointment; and

(f) Once restrictions have been in place, if a follow-up medical appointment is missed by the worker, the restrictions previously issued by the medical service provider will be allowed to remain in effect for up to 14 days from the date of the missed appointment if the worker subsequently attends a medical appointment.

(6) The insurer shall maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last *Employer-at-Injury Program Reimbursement Request*. The division may request additional information from the insurer in order to perform and complete an audit. The insurer shall maintain the following information at the authorized claim processing location(s) for future audit by the division:

- (a) The worker's claim file;

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(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of the work release from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the wage subsidy period as follows:

(A) Payroll records shall state the dates (daily), hours worked, wage rate(s), and the worker's gross wages for the wage subsidy period;

(B) Payroll records shall state the wage rate or rates if the worker is paid by any method other than hourly wage. If only part of the period covered by the payroll record is for transitional work, the payroll record must be supplemented with documentation of how the worker's earnings were prorated for the Wage Subsidy; and

(C) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work shall be provided for those days.

(d) A legible copy of invoices, proof of payment, and proof of the delivery date of the item(s) for Worksite Modification purchases and Employer-at-Injury Program purchases; [and]

(e) Written justification for Worksite Modification as specified in OAR 436-105-0520(2)(f)[.]; **and**

**(f) Documentation of the transitional work. Documentation must include the start date, wage and hours, and a description of the job duties.**

(7) The insurer may end the Employer-At-Injury Program at any time while the worker's claim is open. The insurer shall end the Employer-At-Injury Program when the worker or employer meet any of the end of eligibility criteria listed in OAR 436-105-0510(3).

**Stat. Auth.:** ORS 656.340, 656.622, 656.726(4)

**Stats. Implemented:** ORS 656.340, 656.622

**Hist:** Amended and renumbered, sections (4)-(7) from OAR 436-110-0540(2), (3), & (7), 8/14/01, WCD Admin. Order 01-057, eff. 10/1/01

**Amended 12/11/02 as WCD Admin. Order 02-063 eff. 12/11/02 (Temp)**

**436-105-0510 Eligibility and End of Eligibility for the Employer-at-Injury Program**

(1) The eligibility criteria for an employer are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage during and through the Employer-at-Injury Program period;

(b) The employer is the employer at injury as defined in OAR 436-105-0005;

(c) The employer is re-employing an eligible worker while the worker's claim is open;  
and

(d) The employer is not currently ineligible for Employer-at-Injury Program benefits under OAR 436-105-0560.

(2) The eligibility criteria for a worker are:

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(a) The worker has an accepted Oregon compensable injury or occupational disease. Injuries covered by the Injured Inmate Law do not qualify;

(b) The worker has not returned to regular work under the most recent claim opening except when there is a release for regular work and the worker is subsequently released for work with restrictions under the same claim opening; and

(c) The worker [is released for work with] **has** cited restrictions from the medical service provider which prevent the worker from performing regular work.

(3) Reasons for ending Employer-at-Injury Program eligibility include the following, whichever occurs first:

(a) The worker or employer no longer meet the eligibility provisions stated in sections (1) and (2) of this rule;

(b) The worker exceeds the hourly or physical restrictions cited by the medical service provider;

(c) The worker's claim is closed;

(d) The worker's transitional work ends;

(e) The medical release lapses per OAR 436-105-0500(5);

(f) The worker's need for transitional work is no longer due to the compensable injury which gave cause for use of the Employer-at-Injury Program;

(g) The Employer-at-Injury Program reimbursement is requested; or

(h) Sanctions under OAR 436-105-0560 preclude eligibility.

**Stat. Auth.:** ORS 656.622, 656.726(4)

**Stats. Implemented:** ORS 656.622

**Hist:** Amended and renumbered from OAR 436-110-0520, 8/14/01, WCD Admin. Order 01-057, eff. 10/1/01

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