



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services
Workers' Compensation Division
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August 20, 2007

Proposed Changes to Workers' Compensation Rules

The 2007 Oregon Legislature passed a number of bills affecting workers' compensation laws. The Department of Consumer and Business Services, Workers' Compensation Division proposes changes to OAR chapter 436 to make these rules consistent with the revised laws. In addition, the department proposes changes to make the rules easier to understand, to streamline regulations, and to expand return-to-work incentives for the Employer-at-Injury Program and Preferred Worker Program.

Please review the attached documents for more information about proposed changes and possible fiscal impacts.

The department welcomes public comment on proposed changes and has scheduled a public hearing.

- When is the hearing?** September 24, 2007, 2:00 p.m.
- Where is the hearing?** Labor & Industries Building
350 Winter Street NE, Room 260 (2nd Floor),
Salem, Oregon 97301
- How can I make a comment?** Come to the hearing and speak, send written comments, or do both. Send written comments to:
Fred Bruyns, rules coordinator
Workers' Compensation Division
350 Winter Street NE (for courier or in-person delivery)
PO Box 14480, Salem, OR 97309-0405
Email - fred.h.bruyns@state.or.us
Phone - (503) 947-7717; Fax - (503) 947-7581

The closing date for written comments is September 27, 2007.

How can I get copies of the proposed rules?

On the Workers' Compensation Division's Web site –

<http://www.cbs.state.or.us/external/wcd/policy/rules/rules.html#proprules>

Or call (503) 947-7627 to get free paper copies

Questions?

Contact Fred Bruyns, (503) 947-7717.

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING

A Statement of Need and Fiscal Impact accompanies this form.

Dept of Consumer and Business Services (DCBS),
Workers' Compensation Division
Agency and Division

OAR CHAPTER 436
Administrative Rules Chapter Number

Fred Bruyns
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RULE CAPTION

Proposed rules affecting workers' compensation insurance, claims processing, medical treatment, and return-to-work assistance.

September 24, 2007	2:00 p.m.*	Room 260 (2 nd Floor, Labor & Industries Building) 350 Winter Street NE, Salem, Oregon	Fred Bruyns
Hearing date	Time	Location	Hearings Officer

***NOTE: The hearing will begin at 2:00 p.m. and end when all present who wish to testify have done so. Written testimony will be accepted through September 27, 2007.**

The site of the hearing is accessible for individuals with mobility impairments. Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

ADOPT: OAR 436-105-0511; 436-105-0512; 436-160-0400; 436-160-0410; 436-160-0420; 436-160-0430

AMEND: OAR 436-040; 436-105; 436-110; 436-120; and

436-009-0005	436-015-0005	436-030-0175	436-050-0100	436-060-0008	436-160-0004
436-009-0010	436-015-0030	436-030-0185	436-050-0175	436-060-0010	436-160-0005
436-009-0020	436-015-0040	436-035-0005	436-050-0200	436-060-0015	436-160-0006
436-009-0030	436-015-0120	436-035-0110	436-050-0400	436-060-0018	436-160-0010
436-009-0040	436-030-0007	436-035-0350	436-050-0410	436-060-0055	436-160-0020
436-010-0005	436-030-0020	436-035-0390	436-050-0420	436-060-0060	436-160-0030
436-010-0210	436-030-0035	436-035-0420	436-050-0440	436-060-0140	436-160-0040
436-010-0220	436-030-0115	436-035-0500	436-050-0450	436-060-0147	436-160-0050
436-010-0230	436-030-0135	436-045-0008	436-050-0455	436-060-0150	436-160-0060
436-010-0240	436-030-0145	436-045-0030	436-050-0460	436-160-0001	436-160-0070
436-010-0265	436-030-0155	436-050-0003	436-050-0470	436-160-0002	436-160-0080
436-010-0280	436-030-0165	436-050-0005	436-050-0480	436-160-0003	436-160-0090

REPEAL: 436-030-0440; 436-030-0450; 436-030-0460; 436-030-0550; 436-030-0570;
436-110-0326; 436-110-0327; 436-110-0380; 436-120-0730

ORS 656.726(4)
Stat. Auth.

Other Authority

ORS chapter 656, as amended by enrolled: Senate Bill (SB) 83 – Oregon Laws (OL) 2007, ch. 70; SB 147 - OL 2007, ch. 86; SB 253 - OL 2007, ch. 491; SB 504 - OL 2007, ch. 505; SB 563 - OL 2007, ch. 423; SB 762 - OL 2007, ch. 518; House Bill (HB) 2218 - OL 270; HB 2756 - OL 2007, ch. 252; HB 2783 - OL 2007, ch. 656; HB 2943 - OL 2007, ch. 300

Stats. Implemented

RULE SUMMARY

Amendments to implement changes in the Workers' Compensation Law, including:

- Replacing the term "Handicapped Workers" with "Workers with Disabilities" (SB 83);
- Updating name of Board of Medical Examiners for the State of Oregon to "Oregon Medical Board" (SB 147);

- Including “administrative law judge” as a person who may approve or disapprove a claims disposition agreement (SB 253);
- Describing restrictions affecting emergency room physicians’ rights to be attending physicians and authorize temporary disability benefits (SB 504);
- Deleting requirement that managed care organizations send to the director copies of all new or amended treatment standards, protocols, and guidelines for the director’s review and approval; deleting related definitions (SB 563);
- Explaining how DCBS will publish the maximum reimbursable amount for medical services for non-disabling claims (SB 762);
- Amending penalty provisions affecting managed care organizations; deleting procedures for temporary rule promulgation to address disability in individual claims (when medical conditions are not addressed by current standards), and addressing such conditions in the director’s order on reconsideration, and providing that penalties will not be assessed if an increase in compensation results from such an order; describing how insurers must process requests for a lump sum payments of permanent partial disability awards (HB 2218);
- Describing the authority and limitations for several types of providers - chiropractors, naturopaths, podiatrists, and physician assistants - when acting as attending physicians (HB 2756);
- Referring to ORS 656.427 regarding time frames for termination of guaranty contracts; defining “premium” (HB 2783);
- Adopting standards of professional conduct for health care providers who perform independent medical examinations, which apply if the provider’s professional regulatory board has not adopted standards for performing such examinations (HB 2943);

General amendments to OAR chapter 436, including:

- Using plain language to add clarity to a number of rules;
- Shortening some rules by removing unnecessary descriptions of DCBS procedures;

Amendments to OAR 436, 009, “Oregon Medical Fee and Payment Rules” and OAR 436-160, “Electronic Data Interchange” (EDI), to improve the quality of medical billing data for use by DCBS and its customers, including:

- Requiring hospitals and other health care providers to include sufficient data on their billings so insurers and DCBS can identify the providers;
- Requiring insurers to report medical billing data to DCBS using standards for electronic data interchange adopted by the International Association of Industrial Accident Boards and Commissions;
- Listing the data elements reportable to DCBS; testing procedures for EDI; phase-in dates for EDI and when insurers and self-insured employers are subject; procedures for requesting deferral of EDI reporting;

Amendment to OAR 436-010, “Medical Services,” to remove obsolete medical utilization guideline:

- Regarding frequency of treatment in OAR 436-010-0230;

Amendments to OAR 436-030, “Claim Closure and Reconsideration,” to eliminate conflicts between statute and rules, streamline processing, delete obsolete rules, and reduce litigation, including:

- Restricting reconsideration of claim closure to issues raised by the parties plus requirements under ORS 656.268(1);
- Requiring insurers to submit documents related to reconsideration of claim closure in chronological order;
- Removing the limitation on attorney fees from OAR 436-030-0175(4);
- Deleting obsolete rules OAR 436-030-0440, 0450; 0460, 0550, and 0570; the relevant subject matter from these rules has been addressed in other rules in OAR 436-030 and 436-035 (since approximately 1988), but the rules have remained in the Oregon Administrative Rules published by the Secretary of State;

Amendments to OAR 436-035, “Disability Rating Standards,” to clarify or correct certain provisions, and to provide for rating disability for a medical condition not currently addressed by the standards, including:

- Clarifying the definition of “direct medical sequela”;
- Correcting the description of impairment involving angulation or malalignment of the humerus;
- Clarifying how to rate impairment for surgery involving one or more discs or vertebrae;
- Eliminating provision that if a value of impairment is determined for damage to the brain, no additional value for speech or psychiatric impairment is allowed;

- Provide standards for rating impairment for vaginal prolapse;

Amendments to OAR 436-050, “Employer/Insurer Coverage Responsibility,” to clarify certain provisions and ensure appropriate oversight of worker leasing company licensing and practices, including:

- Clarifying time frames and process for cancellation of self-insurance;
- Revising regulations affecting worker leasing companies, including:
 - Relevant definitions;
 - The application and license renewal process;
 - Reporting and record-keeping;
 - Grounds for disqualification, suspension of license, and revocation of license by the director;
 - Appeal rights for persons refused approval or renewal of a worker leasing license;
 - Reapplication following disqualification for, or revocation of, license;
 - Continuation of a disqualification, suspension, or revocation of a worker leasing license applicable to any new worker leasing company created through the sale, transfer, or conveyance of ownership or of the worker leasing company’s assets to another person or controlling person;
 - Penalties under ORS 656.990;

Amendments to OAR 436-060, “Claims Administration,” to eliminate inconsistencies in DCBS rules and clarify or streamline certain provisions, including:

- Revising time frame for employers’ first aid record-keeping (to be consistent with Oregon OSHA requirements);
- Reducing the documentation a worker must submit when appealing an insurer’s refusal to reclassify a claim;
- Clarifying conditions under which the insurer must notify health care providers when a workers’ compensation claim is denied or partially denied;

Amendments to OAR 436-105, “Employer-at-Injury Program” (EAIP), to promote increased use of the EAIP and therefore earlier return to work of injured workers with their employers at injury, by streamlining program administration, setting an appropriate fee payable to insurers for administration of the program, and expanding some incentives, including:

- Providing that a medical release remains in effect until another medical release is issued by the worker’s medical service provider;
- Providing that a worker is eligible for EAIP services while the claim is “deferred” (prior to acceptance or denial);
- Providing insurers greater discretion to determine appropriate EAIP worksite modifications and EAIP purchases;
- Providing insurers greater discretion to determine what is appropriate training; eliminating the requirement that EAIP purchases for training are limited to “accredited” or “licensed” training or courses;
- Increasing maximum reimbursable amount for EAIP purchases for tools and equipment;
- Allowing insurers to submit more than one reimbursement request per EAIP;
- Stating the administrative fee payable to the insurer for its administration of EAIP services (formerly not prescribed by rule);

Amendments to OAR 436-110, “Preferred Worker Program” (PWP) to promote increased use of the PWP and therefore facilitate the return to work of injured workers and improve return-to-work outcomes (wages, tenure, etc.), by streamlining program administration, creating new PWP incentives, and expanding some existing incentives, including:

- Redefining and simplifying “date of hire” and “reimbursable wages”;
- Shortening and simplifying the wording that must appear on notices to workers about potential PWP benefits;
- Issuing PWP identification cards with no expiration date - workers could offer the initial and any subsequent employers three full years of premium exemption and claim cost reimbursement;
- Eliminating the requirement that a modification of regular work be “substantial” in order for a worker to be eligible for PWP benefits other than Worksite Modification;
- Removing the restriction that Wage Subsidies may not be combined with subsidies from other sources, with the exception of subsidies under OAR 436-120;
- Revising the name of “Obtained Employment Purchases” to “Employment Purchases”;
- Allowing Employment Purchases while a worker is receiving vocational assistance under OAR 436-120;

- Allowing replacement of Employment Purchases;
- Increasing the maximum expenditure for an Employment Purchase for tools and equipment;
- Providing Employment Purchases needed to create a new worksite;
- Creating a miscellaneous category of Employment Purchase that may be used to help a worker find, accept, or retain employment;
- Allowing a second use of Wage Subsidy and a second use of each category of Employment Purchase for a different job with the same employer (formerly two wage subsidies could not be used with the same employer);
- Eliminating forms currently required for Worksite Modifications costing \$2,500 or less;
- Eliminating the general requirement for competitive bids for Worksite Modification;

Amendments to OAR 436-120, “Vocational Assistance to Injured Workers,” to improve sufficiency of certain notices, clarify time frames for submitting information to DCBS, streamline return-to-work plan development process, clarify or define certain provisions, and delete obsolete provisions, including:

- Describing how the Workers’ Compensation Division will determine the timeliness of any document that must be sent to the division in vocational matters;
- Requiring that notices of eligibility for vocational assistance, training, or direct employment services explain the rights of the worker to request a return-to-work plan conference;
- Requiring that notice must be in writing when an insurer notifies a worker that an eligibility determination is postponed while awaiting information about permanent restrictions;
- Requiring that if an insurer ends a worker’s eligibility because lack of suitable employment is not due to the limitations caused by the injury, the insurer must have obtained new information that did not exist or that the insurer could not have discovered with reasonable effort at the time the insurer determined eligibility;
- Including among the reasons a worker would be ineligible for vocational assistance or for which eligibility would end, that the worker is unavailable for vocational assistance due to short-term incarceration;
- Eliminating all time frames related to return-to-work plan development except that a plan must be approved within 45 days (direct employment) or 90 days (training) under OAR 436-120-0500(1) & (2);
- Updating the vocational fee schedule (consistent with changes in state average weekly wage and Bulletin 124);
- Eliminating the requirement that insurers request administrative approval for vocational services when the insurer is entitled to claims cost reimbursement under OAR 436-110;
- Repealing the rule: “Reimbursement of Vocational Assistance Costs for Pre-1986 Injuries”; and
- Defining “show-cause hearing” for the purposes of OAR 436-120-0915(3).

Request for public comment: The Workers’ Compensation Division requests public comment on whether other options should be considered for achieving the rules’ substantive goals while reducing the negative economic impact of the rules on business.

Address questions to:

Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers’ Compensation Division’s Web site:

<http://wcd.oregon.gov/policy/rules/rules.html#proprules>

or from WCD Publications, 503-947-7627 or fax 503-947-7630.

September 27, 2007
Last Day for Public Comment

John L. Shilts
Authorized Signer and Date

8-14-07

John L. Shilts, Administrator, Workers’ Compensation Division
Printed name

*The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

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Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Consumer and Business Services,
Workers' Compensation Division

OAD CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

In the Matter of)
The Amendment of OAR:)
436-009, Oregon Medical Fee and Payment Rules)
436-010, Medical Services)
436-015, Managed Care Organizations)
436-030, Claim Closure and Reconsideration)
436-035, Disability Rating Standards)
436-040, Workers with Disabilities Program)
436-045, Reopened Claims Program)
436-050, Employer/Insurer Coverage Responsibility)
436-060, Claims Administration)
436-105, Employer-at-Injury Program)
436-110, Preferred Worker Program)
436-120, Vocational Assistance to Injured Workers)
436-160, Electronic Data Interchange)

Rule Caption:

Proposed rules affecting workers' compensation insurance, claims processing, medical treatment, and return-to-work assistance.

Statutory Authority: ORS 656.726(4)

Other Authority:

Statutes Implemented: ORS chapter 656, as amended by enrolled: Senate Bill (SB) 83 – Oregon Laws (OL) 2007, ch. 70; SB 147 - OL 2007, ch. 86; SB 253 - OL 2007, ch. 491; SB 504 - OL 2007, ch. 505; SB 563 - OL 2007, ch. 423; SB 762 - OL 2007, ch. 518; House Bill (HB) 2218 - OL 270; HB 2756 - OL 2007, ch. 252; HB 2783 - OL 2007, ch. 656; HB 2943 - OL 2007, ch. 300

Need for the Rule(s): Chapter 436 must be amended to be consistent with the Workers' Compensation Law, as amended by legislation passed by the 2007 Oregon Legislature. Some of that legislation required the director to make rules to implement revised laws. The department is proposing additional changes to make the rules easier to understand, to streamline regulations affecting stakeholders, and to expand return-to-work incentives for the Employer-at-Injury Program and Preferred Worker Program.

Documents Relied Upon, and where they are available: "Issues" documents as presented to advisory committees; advisory committee meeting minutes; written advice from advisory committee members.

These records are available for public inspection in the Administrator's Office, Workers' Compensation Division of the Department of Consumer and Business Services, 350 Winter Street NE, Salem, Oregon 97301-3879, upon request and between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. Please call (503) 947-7717 to request copies.

Fiscal and Economic Impact, including Statement of Cost of Compliance: The following is a list of significant estimated fiscal/economic impacts on persons and organizations affected by proposed rule amendments:

Amendments to implement changes in the Workers' Compensation Law

- Senate Bill 504 restricts emergency room physicians' rights to be attending physicians and authorize temporary disability benefits. Overall emergency-room treatment charges can be substantially higher than charges for visits to primary care physicians. In addition, early referral to primary care physicians should improve insurers'

ability to keep track of authorization of temporary disability benefits and to promote return-to-work. The agency estimates that these changes should result in a small reduction in insurers' claims costs.

- Senate Bill 563 eliminates the requirement that managed care organizations (MCOs) send to the director copies of all new or amended treatment standards, protocols, and guidelines for the director's review and approval. In the "Statement of Need and Fiscal Impact" filed with the Secretary of State on 8/14/06, DCBS estimated reporting costs for such reporting based on advice from MCOs. The low-high range of estimated reporting costs was then \$100 per year to \$50,000 per year per MCO, potentially \$400/year to \$200,000/year for the four active MCOs. The agency projects elimination of these reporting costs for MCOs.
- House Bill 2756 provides authority and limitations for several types of providers - chiropractors, naturopaths, podiatrists, and physician assistants - when acting as attending physicians. Because we cannot project how many injured workers will choose these providers as their attending physicians, we cannot now project the fiscal impacts. However, DCBS will monitor the effects of HB 2756 to identify impacts over time.
- House Bill 2783 requires insurers to notify the employer of termination of a guaranty contract 45 days in advance instead of the 30 days currently required. In addition, HB 2783 allows for a shorter notice requirement of only 10 days if the termination is based on nonpayment of premium. The agency projects some reductions in costs for insurers, because they can shorten their liability under the 10-day notice provision. The agency projects that these savings will be greater than any increased costs due to the 45-day notice provision, because insurers can adjust notice procedures in order to end liability, in most cases, by a date certain. The agency projects a small positive impact for employers subject to the 45-day notice, as it will give them more time to shop for cost-effective workers' compensation insurance coverage.

In addition to changes to implement changes in the Workers' Compensation Law:

Amendments to OAR 436, 009, "Oregon Medical Fee and Payment Rules" and OAR 436-160, "Electronic Data Interchange" (EDI)

- The agency projects that proposed rule changes will not have a significant fiscal impact on Oregon health care providers, as providers already send sufficient data to insurers on standard billing forms. The agency projects some fiscal impacts for insurers and self-insured employers, smaller for those companies already using EDI in other states and greater for Oregon-only reporters. The advisory committee did not express concerns about implementation costs. However, the agency projects significant costs for some insurers and self-insured employers in order to prepare for EDI, and also projects that these costs will eventually be exceeded by savings due to efficiencies inherent in electronic communication.

Amendments to OAR 436-035, "Disability Rating Standards"

- The agency projects that eliminating provision that if a value of impairment is determined for damage to the brain, no additional value for speech or psychiatric impairment is allowed, will have a positive economic impact on affected workers and an equal increased cost to affected insurers. However, this combination of medical conditions is very rare and the impact is not expected to be significant overall.

Amendments to OAR 436-050, "Employer/Insurer Coverage Responsibility"

- The agency projects that proposed rules affecting worker leasing companies will add a small cost to submit additional information with the application for initial license or renewal of license.
- Conversely, the purpose of these rule changes is to create a level playing field for leasing companies by preventing or removing unfair competition by companies that cannot or will not comply with worker leasing laws and rules. Successfully preventing unfair competition would have a positive economic effect on leasing companies that do comply with the laws and rules. Relative to taking no action, the agency projects a small positive economic impact on worker leasing companies.

Amendments to OAR 436-105, “Employer-at-Injury Program” (EAIP) and OAR 436-110, “Preferred Worker Program” (PWP)

- The agency projects that expanded benefits and administrative fees for the EAIP will cost the Workers’ Benefit Fund (maximum/annual):
 - Reimbursement of EAIP costs before the claim is accepted or denied (if ultimately denied)..... \$700,000.00
 - Increased reimbursable amount for EAIP purchases for tools and equipment \$300,000.00
 - Proposed fee payable to insurers for administration of the EAIP..... \$480,000.00
 - Total \$1,480,000.00

- The agency projects that expanded benefits for the PWP will cost the Workers’ Benefit Fund (maximum/annual):
 - Providing Employment Purchases needed to create a new worksite..... \$100,000.00
 - Creating a miscellaneous category of Employment Purchase that may be used to help a worker find, accept, or retain employment \$100,000.00
 - Total \$200,000.00

- The agency projects that issuing PWP identification cards with no expiration date will increase use of premium exemption and thus increase costs to the Workers’ Benefit Fund. However, the impact would be very minor in the near term and increase gradually over time. The agency does not have a basis to project how many workers will use their cards for future employment, but will monitor this closely.

- Additional proposed changes that expand access to reemployment incentives will have lesser impacts on the Workers’ Benefit Fund; however, the agency does not have a basis to project how extensively these incentives will be used.

- All moneys paid out of the Workers’ Benefit Fund would have a positive economic impact on Oregon employers and insurers. In addition to the direct dollar transfer, by promoting early return to work, the proposed rules may reduce claims costs. In addition, the proposed changes should positively affect injured workers by promoting early return to work, which produces better long-term employment outcomes.

- The Workers’ Benefit Fund has adequate reserves to cover any increased costs resulting from proposed rule changes.

Regarding: Additional proposed changes:

- The agency estimates that additional changes will not have any significant negative economic impacts on any persons or businesses, including small businesses. Because a number of the proposed rule changes streamline processes, the agency projects a small overall positive economic impact of proposed rule changes not otherwise described.

How were small businesses involved in the development of this rule?

Representatives from small businesses participated in the stakeholder advisory committees.

Cost of compliance effect on small businesses:

Estimated number of small businesses subject to the proposed rule:

One managed care organization. (Of the four managed care organizations certified and active in the Oregon workers’ compensation system, one managed care organization meets the definition of a small business under ORS 183.310.)

Identify the types of businesses and industries with small businesses subject to the proposed rule:

The proposed rule amendments will affect managed care organizations.

Describe the projected reporting, record-keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services:

Reporting: Proposed rule changes would require less reporting by managed care organizations, who will no longer have to send to the director copies of all new or amended treatment standards, protocols, and guidelines for the director's review and approval.

Record-keeping: Proposed rule changes may substantially reduce record keeping by a managed care organization only if organization keeps a running record of updated treatment standards, protocols, and guidelines for the purpose of reporting the updates to the director.

Other administrative activities and costs of professional services: For managed care organizations that contract with companies that specialize in provision of guidelines and protocols, there is the potential for reduced professional services costs.

Extent of economic impact: The agency projects a substantial reduction in reporting costs for MCOs.

Identify equipment, supplies, labor and increased administration required for compliance with the proposed rule:

Equipment: The proposed rule changes do not require the purchase of equipment to achieve compliance.

Supplies: The proposed rule changes do not require the purchase of supplies to achieve compliance.

Labor: The proposed rule changes do not require increased labor costs to achieve compliance.

Administration: The proposed rule changes do not require increased administrative costs to achieve compliance.

Extent of economic impact: No increased costs for these categories.

Administrative Rule Advisory Committee consulted:

Yes. Advisory committees met on 6/21/07, 7/10/07, 7/16/07, 7/17/07, 7/19/07, 7/20/07, 7/23/07, 7/26/07, 7/31/07

The agency asked the advisory committee for advice on the impact of the discussed changes on costs, including any significant adverse impacts on small businesses.

John L. Shilts

8-14-07

Signature and Date

John L. Shilts, Administrator, Workers' Compensation Division

Printed name

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION



Preferred Worker Program
Proposed Oregon Administrative Rules
Chapter 436, Division 110

Summer/Fall 2007

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Revisions are marked as follows:

Deleted text has a "strike-through" style, as in

~~Deleted~~

Added text is bold and underlined, as in

Added

HISTORY LINES: These rules include only the most recent "History" lines. A rule's history line shows when the rule was last revised and its effective date. To obtain a "Chapter 436 revision history index," please call the Workers' Compensation Division, (503) 947-7627, or visit the division's Web site:

<http://www.wcd.oregon.gov/policy/rules/history.html>

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
Proposed Rules **PREFERRED WORKER PROGRAM**

EXHIBIT "A"
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110

436-110-0001 Authority for Rules

The director has adopted OAR Chapter 436, Division 110 under authority of ORS 656.622 and 656.726.

Stat. Auth.: ORS 656.622, 656.726(4)
 Stats. Implemented: ORS 656.622
 Hist: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0002 Purpose of Rules

(1) These rules explain what assistance and reimbursements are available from the Preferred Worker Program, who is qualified, and how to receive assistance and reimbursements.

(2) The Preferred Worker Program encourages the reemployment of workers whose on-the-job injuries result in disability which may be a substantial obstacle to employment by providing assistance from the Workers' Benefit Fund to eligible injured workers and to the employers who employ them.

(3) The Preferred Worker Program is a worker and employer-at-injury -activated program.

Stat. Auth.: ORS 656.622, 656.726(4)
 Stats. Implemented: ORS 656.622
 Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0003 Applicability of Rules

(1) These rules apply to all requests for Preferred Worker Program reemployment assistance received by the division on or after the effective date of these rules. ~~Reemployment assistance received as a result of a request filed and approved between June 30, 1990 and the effective date of these rules counts toward the maximum assistance allowed by these rules.~~

(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: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0005 Definitions

For the purpose of these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, or the administrator's delegate for the matter.

(2) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(3) "Date of hire" means the date the worker started work for the employer in the job for which benefits are requested.

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(43) “Director” means the Director of the Department of Consumer and Business Services, or the director’s delegate for the matter.

(54) “Disability” means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers’ compensation claim which limits the worker from performing one or more of the worker’s regular job duties.

(65) “Division” means the Workers’ Compensation Division of the Department of Consumer and Business Services.

(76) “Division approval” means a Preferred Worker agreement signed by an authorized division representative.

(87) “Employer at injury” means the organization in whose employ the worker sustained the injury or occupational disease.

(98) “Exceptional disability” means a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury which results in impairment equal to or greater than a Class III as defined in OAR 436-035. The division ~~shall~~**will** determine whether a worker has an exceptional disability based upon the combined effects of all of the worker’s Oregon compensable injuries resulting in permanent disability.

(109) “Fund” means the Workers’ Benefit Fund.

~~(10) “Hire date” means the date the worker started work for the employer in the employment for which benefits are requested if the request for Preferred Worker Program assistance is sent to the division prior to or within 30 calendar days after the start work date. In calculating the 30-day period under this section, the hire date is not included, and if the 30th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 30-day period. The hire date is 12:01 AM the day following the request if the request is sent to the division more than 30 days after the start work date.~~

(11) “Insurer” means the insurance company or self-insured employer responsible for the workers’ compensation claim.

(124) “Premium” means premium which results from a calculation which takes payroll multiplied by applicable rates of the employer’s individual insurer multiplied by the employer’s experience rating modification less any discounts, assessments, surcharges, or taxes.

(132) “Regular employment” means the **employment job** the worker held at the time of the injury, claim for aggravation, or own motion opening. ~~under ORS 656.278. Regular employment which has been substantially modified as described in OAR 436-110-0380 is not regular employment for purposes of the Preferred Worker Program.~~

(143) “Reimbursable wages” means the **gross taxable wages** ~~money rate~~ paid a worker for services performed, ~~including paid leave, overtime, commission, and reasonable value of board, rent, housing, lodging, and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. Bonus pay shall be considered reimbursable only when provided as part of the written or verbal employment contract as a means to increase the worker’s wages. End of the year and other one-time bonuses paid at the employer’s discretion, and safety bonuses, are not reimbursable. Wages do not include tips, discretionary~~

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~~bonuses, paid leave cash outs, employee insurance or benefits programs, employee discounts, or other forms of remuneration not included as part of the worker's gross wages. Benefits paid as wages or cash, even if reported as part of a worker's gross wages, are not subject to reimbursement.~~

~~(14) "Start work date" means the date the worker started work for the employer in the employment for which benefits are requested.~~

(15) "Worksite" means a primary work area which is in Oregon, already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's, worker's, or worker leasing company's client's premises, property, and equipment used to conduct business under the employer's or client's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. If the "worksite" is mobile, it must be available in Oregon for inspection and modification.

Stat. Auth.: ORS 656.622, 656.726(4)
 Stats. Implemented: ORS 656.622
 Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0006 Administration of Rules

(1) Orders issued by the division to enforce ORS 656.622 or these rules are orders of the director.

(2) The department maintains the financial integrity of the fund and all reimbursement is subject to the availability of funds. If the funds are too low for all reimbursements, the director has final authority to determine how the funds will be disbursed.

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

(a) Advertisements and promotion of reemployment assistance programs and associated production costs; and

(b) Public reemployment assistance program conferences and workshops.

Stat. Auth.: ORS 656.622, 656.726(4)
 Stats. Implemented: ORS 656.622
 Hist: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0007 Reconsideration/Appeal to the Director

(1) The division will deny any request for Preferred Worker Program assistance it finds is in violation of these rules. The division has the discretion to deny a request it determines is not reasonable, practical, or feasible, or considers an abuse of the program.

(2) Parties directly affected by a division reemployment assistance decision may request a reconsideration by sending a written request for reconsideration to the administrator no later than 60 days after the date the decision is issued. Facsimiles that are legible and complete are acceptable and will be processed the same as originals. Reconsideration must precede a director's review.

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(3) The request for reconsideration ~~shall~~**must** specify the reasons why the decision is appealed. No reconsideration ~~shall~~**will** be granted unless the request meets the requirements of this subsection.

(4) The division will reconsider the decision prior to a director's review and will notify all affected parties of its decision upon reconsideration.

(5) If, upon reconsideration, the division upholds the original decision, the director's review ~~shall~~**will** begin.

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

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

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

Stats. Implemented: ORS 656.622

Hist: Amended and renumbered section (1) from OAR 436-110-0540(11), 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0240 Insurer Participation in the Preferred Worker Program

(1) The insurer of the employer at injury ~~shall~~**must** be an active participant in providing reemployment assistance. Participation includes issuing notices of the assistance available from the Preferred Worker Program.

(2) The insurer ~~shall~~**must** notify the worker and employer at injury in writing of the reemployment assistance available from the fund. A notice ~~shall~~**must** be issued:

(a) Within five days of a worker's release for work after the worker has been declared medically stationary by the attending physician;

(b) Upon determination of eligibility or ineligibility of the worker for vocational assistance under OAR 436-120; and

(c) Upon approval of a Claim Disposition Agreement.

(3) Pursuant to section (2) of this rule, the Notice to the Worker ~~shall~~**must** appear in bold type and contain the following language:

The Preferred Worker Program helps Oregon's eligible injured workers get back to work. ~~If you have permanent limitations as a result of an Oregon compensable injury, and your medical care provider has determined you will not be able to return to the employment you held at the time of your injury or aggravation because of those limitations, you may qualify as a Preferred Worker and receive reemployment assistance.~~ To find out whether you qualify, contact the Preferred Worker Program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: (503) 947-7588, 1-800-445-3948 (~~toll-free from Oregon only~~), (503) 947-7993 (TTY), or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161 (~~toll-free from Oregon~~)

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~~only~~), or FAX (541) 776-602246.

Or write the Preferred Worker Program at: 350 Winter Street NE, Rm 27, Salem, Oregon 97301-3879; or 1840 Barnett Road, Suite C, Medford, Oregon 97504.

(4) Under section (2) of this rule, the Notice to the Employer shall **must** appear in bold type and contain the following language:

If your worker is unable to return to regular work because of injury-caused limitations, you may be eligible for the Preferred Worker Program incentives including Premium Exemption, Claim Cost Reimbursement, Wage Subsidy, and Worksite Modification, which you may use to re-employ your worker. You must request Preferred Worker Program assistance from the Workers' Compensation Division within 180 days of the worker's claim closure date. To find out about the Preferred Worker Program, contact the program at one of the telephone numbers, fax numbers, or addresses listed below.

For the Salem office call: (503) 947-7588, 1-800-445-3948 (~~toll-free from Oregon only~~), (503) 947-7993 (TTY), or FAX (503) 947-7581.

For the Medford office call: (541) 776-6032, 1-800-696-7161 (~~toll-free from Oregon only~~), or FAX (541) 776-602246.

Or write the Preferred Worker Program at: 350 Winter Street NE, Rm 27, Salem, Oregon 97301-3879; or 1840 Barnett Road, Suite C, Medford, Oregon 97504.

(5) The insurer shall **must** provide the division with Preferred Worker information in the form and format the director prescribes in OAR 436-030, upon the following:

(a) Claim closure according to ORS 656.268;

(b) Within 30 calendar days from the insurer's receipt of the earliest Opinion and Order of an Administrative Law Judge, Order on Reconsideration, Order on Review by the Board, decision of the Court of Appeals, or stipulation which grants initial permanent disability after the latest opening of the worker's claim; and

(c) Approval of a Claim Disposition Agreement according to ORS 656.236 and documented medical evidence indicates permanent disability exists as a result of the injury or disease, and the worker is unable to return to regular employment.

Stat. Auth.: ORS 656.340, 656.622, 656.726(4)
 Stats. Implemented: ORS 656.340(1), (2), (3); 656.622; 656.726(4)
 Hist: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0290 Employer at Injury Use of the Preferred Worker Program

The conditions for the employer at injury to activate the Preferred Worker Program include:

(1) The employer at injury must request Preferred Worker Program assistance from the division within 180 days of the worker's claim closure date, with the following exception. When Worksite Modifications are provided, and the modifications are completed and verified by the

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division more than 150 days after the worker's claim-closure date, the employer at injury will have 30 calendar days from the verification date to request other assistance.

(2) In calculating the 180-day period under this rule, the claim closure date will not be included, and if the 180th day falls on a Saturday, Sunday, or legal holiday, the next business day will be considered the end of the 180-day period.

~~(3) The employment for which benefits are requested must be within the worker's injury-caused restrictions, unless Worksite Modifications are requested to comply with this section. In this case no other Preferred Worker Program benefits will be approved until all the modifications are in place and verified by a representative of the division.~~

(34) The worker must agree to accept the new or modified regular job in writing. The job offer must include:

- (a) The start date. If the job starts after the modifications are in place, so note;
- (b) Wage and hours;
- (c) Job site location; and
- (d) Description of job duties.

~~(45)~~ If the employer at injury uses Worksite Modification assistance and the employer or worker later requests additional modifications for the same job, the employer's Worksite Modification benefit will be exhausted before using the worker's Worksite Modification benefits.

~~(56)~~ All other provisions under OAR 436-110 apply unless otherwise indicated.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist.: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0310 Eligibility and End of Eligibility for the Preferred Worker Program

(1) The eligibility requirements for an employer, except as provided in OAR 436-110-0345(1) for ~~Obtained~~ Employment Purchases, are:

- (a) The employer has and maintains Oregon workers' compensation insurance coverage;
- (b) The employer complies with the Oregon Workers' Compensation Law;
- (c) The employer must offer or provide employment to an eligible Preferred Worker who is a subject Oregon worker according to ORS 656.027;
- (d) If the employer is a worker leasing company, it must be licensed with the division;
and
- (e) The employer is not currently ineligible for Preferred Worker benefits under OAR 436-110-0900.

(2) The eligibility requirements for a worker are:

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

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(b) Because of injury-caused limitations, medical evidence indicates the worker will not be able to return to regular employment as defined in OAR 436-110-0005 under the most recent disabling claim or claim opening. If the worker is not eligible under the most recent disabling claim or claim opening, eligibility may be based on the most recent disabling claim closure where injury-caused permanent restrictions prevented the worker from return to regular employment. ~~If the worker was previously found eligible under that claim, the worker will not be eligible again on that claim closure. Subsequent eligibility determination will be based on claim openings that occur after the date that the most recent Preferred Worker Identification Card is issued;~~

(c) Medical documentation indicates permanent disability exists as a result of the injury or disease, whether or not an order has been issued awarding permanent disability; and

(d) The worker is authorized to work in the United States.

(3) A worker may not use Preferred Worker benefits for self-employment unless the injury which gave rise to the worker's eligibility for the Preferred Worker Program occurred in the course and scope of self-employment. In that case, the worker may use the benefits to return to the same self-employment or for employment other than self-employment.

~~(4) A worker or employer at injury may not use Preferred Worker benefits, except Worksite Modification, for regular employment or substantially similar employment except as specified in OAR 436-110-0380.~~

~~(4)~~ Reasons for ending Preferred Worker Program eligibility include, but are not limited to, the following:

(a) Misrepresentation or omission of information by a worker or employer to obtain assistance;

(b) Failure of a worker or employer to provide requested information or cooperate;

(c) Falsification or alteration of a Preferred Worker card or a *Preferred Worker Program Agreement*;

(d) Conviction of fraud in obtaining workers' compensation benefits;

(e) The worker no longer meets the eligibility requirements under section (2) of this rule;

(f) The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0900;

(g) The employer does not maintain Oregon workers' compensation insurance coverage, except as provided in OAR 436-110-0345(1) for ~~Obtained~~ Employment Purchases;

~~(h) The current Preferred Worker Identification Card expires without being activated, with the following exception. If the worker's card expired and the worker's job modification is determined to be "substantial" under OAR 436-110-0380, the worker can activate Premium Exemption within 30 calendar days from the date the division determines the modification is "substantial," unless any of subsections (a) through (f) apply; or~~

~~(i) The current Preferred Worker Eligibility Card expires, with the following exception. When Premium Exemption has expired and the worker's job modification is determined to be~~

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~~“substantial” under OAR 436-110-0380, the worker will be eligible to request Wage Subsidy and Obtained Employment Purchases within 30 calendar days from the date the division determines the modification is “substantial,” unless any of subsections (a) through (f) apply.~~

~~(6) If there is an active *Preferred Worker Program Agreement*, the division will not end Preferred Worker Program eligibility until termination of the agreement if a Disputed Claim Settlement according to ORS 656.289 settles that portion of the claim from which eligibility arose or the claim is subsequently denied according to ORS 656.262. Under an employer-at-injury activated agreement Premium Exemption ends when the job ends, or three years from the effective date of Premium Exemption, whichever occurs first. Under a worker-activated agreement, Premium Exemption ends either at the expiration date shown on the *Preferred Worker Eligibility Card* or when the job ends, whichever occurs first. When this occurs, the division will issue written notification to the worker if the assistance was worker activated. The worker must notify all affected parties. If the job ends before the expiration date shown on the card, the Preferred Worker card must be surrendered to the division. If the assistance was employer activated, the division will issue written notification to the employer.~~

~~(57) The division retains the right to reinstate Preferred Worker Program eligibility if eligibility was ended prematurely or in error, or the employer has reinstated or obtained workers' compensation insurance coverage.~~

~~(68) A worker found ineligible because he/she was not authorized to work in the United States may request a redetermination of eligibility after providing the division with documentation that he/she is authorized to work in the United States.~~

Stat. Auth.: ORS 656.622, 656.726(4)
 Stats. Implemented: ORS 656.622
 Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0320 Preferred Worker Identification Cards

~~This rule does not apply to employer-activated assistance.~~

~~(1) The division may issues a two types of Preferred Worker Identification cards to eligible workers. The cards identifies the worker as being eligible to offer an employer Preferred Worker Program assistance. Conditions for using the Preferred Worker cards include:~~

~~(a) A worker can have only one valid Preferred Worker card at a time;~~

~~(b) A Preferred Worker card is valid for three years from the date of issue. The three-year period cannot be interrupted or extended; and~~

~~(e) If a Preferred Worker loses the card, the division will issue a replacement card. may be reissued upon loss of the original card during and for the three-year period the original card was issued.~~

~~(2) The first card issued is a *Preferred Worker Identification Card*. The worker and employer use this card to start Premium Exemption by completing the card and returning it to the division. When worker eligibility criteria are met, † The division issues this card as follows:~~

~~(a) Automatically at the time of claim closure based upon insurer submission of Preferred Worker information as specified in OAR 436-110-0240(5);~~

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(b) Prior to claim closure when the worker has available, immediate employment with an employer who meets the eligibility criteria under OAR 436-110-0310(1); ~~or Workers or their representatives may contact the division directly to request an eligibility determination and a Preferred Worker card;~~

~~(c) When notified by the worker or their representative that there is a claim closure by a Claim Disposition Agreement, a Board's Own Motion or insurer's own motion;~~

~~(cd) Upon request by the worker or their representative any time after claim closure; or.~~

~~(e) If, as a result of a new claim or claim reopening, a Preferred Worker meets the Preferred Worker Program eligibility criteria, the division shall issue a new Preferred Worker Identification Card. The later card shall be used for subsequent benefits.~~

~~(3) The second card issued is the Preferred Worker Eligibility Card. The division sends the Preferred Worker this card upon approval of Premium Exemption. This card shows the three-year Premium Exemption period. The worker may offer other employers Preferred Worker benefits for the remainder of the time shown on this card.~~

~~(34) The division may inactivate a Preferred Worker card if:~~

~~(a) The Preferred Worker card was issued in error; or~~

~~(b) Any reason for ending Preferred Worker Program eligibility as specified in OAR 436-110-0310(54) applies.~~

~~(5) If the division finds that a worker who has requested a Preferred Worker card is ineligible, the division shall notify the worker in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the worker's appeal rights as given in OAR 436-110-0007.~~

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

Stats. Implemented: ORS 656.622

Hist: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0325 Premium Exemption General Provisions

(1) Premium Exemption begins automatically when an employer hires a Preferred Worker, and is in effect for 3 years from the date of hire as defined in OAR 436-110-0005(3).

(2) If a worker is not a Preferred Worker on the date of hire, the division will determine when the worker is eligible. Premium Exemption will be effective for 3 years from that eligibility date.

~~(34) Premium Exemption releases an employer from paying workers' compensation insurance premiums and premium assessments on a Preferred Worker during the time Premium Exemption is in effect, up to a maximum of three (3) years. Premium Exemption may not be extended. While actively using Premium Exemption, the employer does not report, and the insurer cannot use, the Preferred Worker's payroll for the calculation of insurance premiums or premium assessments. However, the employer is required to report and pay workers' compensation employer assessments and withhold employee contributions as required by OAR 436-070. The employer ~~shall~~**must** start paying insurance premiums and premium assessments when Premium Exemption ends.~~

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~~(2) Premium Exemption must be activated in order to use Claim Cost Reimbursement and Wage Subsidy unless OAR 436-110-0310(5)(i) applies. Requirements regarding Premium Exemption and Obtained Employment Purchases are provided in OAR 436-110-0346 and OAR 436-110-0347.~~

~~(3) If the division does not approve Premium Exemption, the division will notify the party who requested the assistance in writing. Such notice will provide the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.~~

~~(4) Upon approval of Premium Exemption, the division will issue a Notice of Premium Exemption to the employer, employer's insurer, and the insurer of the employer at injury.~~

~~(45) If a worker covered under Premium Exemption incurs a compensable injury or occupational disease during the Premium Exemption period, the employer must notify its insurer of the injury. If the employer fails to note the Preferred Worker status when the Form 801 was filed with the insurer, the employer must notify the insurer as soon as possible that the injury or disease was incurred by a Preferred Worker.~~

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist.: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0326 — Premium Exemption – Employer at Injury Activated

Premium Exemption is activated by the employer at injury as follows:

~~(1) In order to request Premium Exemption, the employer must send the division a completed and signed *Employer at Injury, Premium Exemption and Wage Subsidy Agreement* within the timelines allowed in OAR 436-110. The worker's agreement in writing to accept the new or modified regular job must accompany the agreement or the request will not be accepted.~~

~~(2) When approved by the division, the effective date for Premium Exemption is the "hire date" as defined in OAR 436-110-0005.~~

~~(3) If Worksite Modification is needed for the worker to perform all the required job duties within the injury-caused restrictions, the employer at injury is not eligible for Premium Exemption until all modifications are in place and verified by a representative of the division. The date of the verification will be considered the date the worker started work for the employer in employment for which benefits are requested.~~

~~(a) If the date of the verification done by the division is more than 150 days after the worker's claim closure, the employer at injury will have 30 days to send the completed and signed agreement to the division; and~~

~~(b) If the worker returns to regular or substantially similar employment, the job for which Premium Exemption is requested must meet "substantial modification" criteria as determined by the division in accordance with OAR 436-110-0380.~~

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist.: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05
 Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06
Repealed xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

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436-110-0327 — Premium Exemption — Worker Activated

Premium Exemption is activated by the worker as follows:

~~(1) When an eligible Preferred Worker issued a *Preferred Worker Identification Card* accepts employment with Premium Exemption requested, the worker and employer must complete the *Preferred Worker Identification Card* and send it to the division within three years of the start work date. Upon approval by the division the effective date will be the hire date as defined in OAR 436-110-0005.~~

~~(2) If the worker returns to regular or substantially similar employment, the job for which Premium Exemption is requested must meet “substantial modification” criteria as determined by the division in accordance with OAR 436-110-0380 before Premium Exemption can be activated.~~

~~(3) Upon approval of Premium Exemption, the division will issue the worker a *Preferred Worker Eligibility Card* that shows the Premium Exemption start and end dates.~~

~~(4) The worker may use a *Preferred Worker Eligibility Card* to obtain new employment and to provide subsequent employers with Premium Exemption for the remainder of the three-year Premium Exemption period.~~

~~(5) Employers who subsequently employ a Preferred Worker must photocopy the *Preferred Worker Eligibility Card* as evidence of Premium Exemption, return the card to the worker, and distribute copies as follows:~~

~~(a) Send one copy to its insurer as notice that a Preferred Worker is employed using Premium Exemption; and~~

~~(b) Keep one copy on file.~~

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

Stats. Implemented: ORS 656.622

Hist.: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

Repealed xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-110-0330 Claim Cost Reimbursement

(1) Claim Cost Reimbursement provides reimbursement to the insurer for claim costs when a Preferred Worker files a claim for injury or occupational disease while employed under Premium Exemption as follows:

(a) Reimbursements will be made for the life of the claim;

(b) Reimbursable claim costs include disability benefits, medical benefits, vocational costs in accordance with OAR 436-120-0720, Claim Disposition Agreements in accordance with ORS 656.236, Disputed Claim Settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries, and administrative costs;

(c) Reimbursable claims costs for denied claims include costs incurred up to the date of denial, but are limited to benefits the insurer is obligated to pay under ORS 656 and diagnostic tests, including insurer medical examinations necessary to determine compensability of the claim;

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(d) The administrative cost factor to be applied to claim costs will be as published in *Bulletin 316*; and

(e) The claim ~~shall~~**must** not be used for ratemaking, individual employer rating, dividend calculations, or in any manner that would affect the employer's insurance premiums or premium assessments with the present or a future insurer. The insurer must be able to document that claim data will not affect the employer's rates or dividend.

(2) The insurer ~~shall~~**must** request Claim Cost Reimbursement as follows:

(a) All requests for reimbursement ~~shall~~**must** be made within one year of the quarter within which payment was made;

(b) Quarterly reimbursement requests must be in the format the director prescribes by bulletin; and

(c) Reimbursement documentation ~~shall~~**must** include, but not be limited to:

(A) Net amounts paid. "Net amounts" means the total compensation paid less any recoveries including, but not limited to, third party recovery or reimbursement from the Retroactive Program, Reopened Claims Program, or the fund;

(B) Payment certification statement; and

(C) Any other information the division deems necessary.

(3) Requests for reimbursement ~~shall~~**must** not include:

(a) Claim costs for any injury which did not occur while the worker was employed with Premium Exemption;

(b) Costs incurred for conditions completely unrelated to the compensable claim;

(c) Costs incurred due to inaccurate, untimely, unreasonable, or improper processing of the claim;

(d) Penalties, fines or filing fees;

(e) Disposition amounts in accordance with ORS 656.236 (CDA) and 656.289 (DCS) not previously approved by the division;

(f) Costs reimbursed or outstanding requests for reimbursement from the Reopened Claims Program, Retroactive Program, or the fund; or

(g) Reimbursable Employer-at-Injury Program costs.

(4) Periodically, the division will audit the physical file of the insurer to validate the amount reimbursed. Reimbursed amounts ~~shall~~**must** be refunded to the division and, as applicable, future reimbursements denied if, upon audit, any of the following is found to apply:

(a) Reimbursement has been made for any of the items specified in section (3) of this rule;

(b) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented;

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(c) The separate payments of compensation have not been documented;

(d) The insurer included claim costs in any dividend or retrospective rating or experience rating calculations;

(e) The insurer is unable to provide applicable records relating to experience rating, retrospective rating, or dividend calculations at the time of audit or within 14 working days thereafter.

(5) If the conditions described in subsections (4)(a) through (e) of this rule are corrected and all other criteria of the rules are met, eligibility for reimbursement may be reinstated. If reimbursement eligibility is reinstated, any moneys previously reimbursed and then recovered will be reimbursed again according to these rules.

(6) If an employer fails to notify its insurer of the "Preferred Worker" status when the *Form 801* is submitted or fails to send its insurer a copy of the *Preferred Worker Eligibility Card*, and later notifies its insurer that the injury or disease was incurred by a Preferred Worker, the insurer ~~shall~~**must** correct all records previously filed which include claim costs in any dividend, retrospective rating, or any claim valuation for experience rating performed.

(7) A Claim Disposition Agreement according to ORS 656.236, a Disputed Claim Settlement according to ORS 656.289, or any stipulation or agreement of a claim subject to claim cost reimbursement from the fund must meet the following requirements for reimbursement:

(a) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition ~~shall~~**must** be submitted to the division prior to submitting the disposition to the Workers' Compensation Board **or administrative law judge** for approval;

(b) A claim's future liability and the proposed contribution from the fund must be a reasonable projection, as determined by the division, in order to be approved for reimbursement from the fund; and

(c) A request for approval of the proposed disposition ~~shall~~**must** include:

(A) The original proposed disposition, containing appropriate signatures and appropriate signature lines for division and Workers' Compensation Board **or administrative law judge** approval, which specifies the proposed assistance from the fund;

(B) A written explanation of how the calculations for the amount of assistance from the fund were made; and

(C) Other information as required by the division.

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

Stats. Implemented: ORS 656.622

Hist.: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0335 Wage Subsidy General Provisions

Wage Subsidy provides an employer with partial reimbursement of a worker's gross wages for a specified period. Wage Subsidy benefits are subject to the following conditions:

(1) ~~Premium exemption must be activated to use Wage Subsidy, unless OAR 436-110-~~

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~~0310(5)(i) applies~~ **The effective date of a Wage Subsidy is mutually agreed to by the division, employer, and worker if applicable;**

(2) A Wage Subsidy is limited to a duration of 183 calendar days and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability as defined in OAR 436-110-0005(9). For a worker with an exceptional disability, the Wage Subsidy duration is limited to 365 calendar days and a monthly reimbursement rate of 75 percent;

(3) A *Wage Subsidy Agreement* may be interrupted once for reasonable cause and extended to complete the *Wage Subsidy Agreement* on a whole workday basis. Reasonable cause includes, but is not limited to, personal or family illness, death in the worker's family, pregnancy of the worker or worker's spouse, a compensable injury to the worker, participation in an Employer-at-Injury Program, or layoff. A layoff must be a minimum of 10 consecutive work days. A period of time during which the employer is without workers' compensation insurance coverage is not "reasonable cause," and no extension will be granted;

(4) A Preferred Worker's pay structure must be the same as the pay structure for other workers employed in similar jobs by the employer;

(5) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by the following method:

- (a) First, examine the wages paid by the employer for other workers doing the same job;
- (b) If no other workers are doing the same job, a labor market survey of the local labor market may be conducted; and
- (c) If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement;

(6) Preferred Worker Program Wage Subsidies may not be combined with **a wage** ~~subsidies from other sources, and~~ **for a training plan under OAR 436-120;**

~~(7) A~~ **A** ~~a~~ worker-activated and employer at injury-activated wage subsidy can not be used for the same job with the employer at injury;

~~(87)~~ **(87)** If the worker's employer changes during the *Wage Subsidy Agreement* period due to a sale of the business, incorporation, or merger, the agreement can be transferred to the new employer by an addendum to the agreement approved by the division as long as the worker's job remains the same and the new employer is eligible under OAR 436-110-0310(1);

~~(8) Upon approval of the *Wage Subsidy Agreement*, the division will send a copy of the agreement to the worker if it is worker activated, and will always send a copy of the agreement with a *Wage Subsidy Reimbursement Request* form to the employer;~~

~~(9) If the division does not approve the *Wage Subsidy Agreement*, the division will notify the party who made the request, in writing. Such notice will give the basis for the decision, the applicable rule(s), and the appeal rights as given in OAR 436-110-0007;~~

~~(10) The employer may request reimbursement of wages paid to the worker, based on the amount agreed to on the *Wage Subsidy Agreement* form or the amount paid to the worker, whichever is less. An employer may request reimbursement, interruption, or extension of a Wage~~

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~~Subsidy for a part of a day the worker worked, but the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the Wage Subsidy;~~

~~(911) Requests for reimbursement must not be submitted more frequently than once every two weeks. A completed and signed *Wage Subsidy Reimbursement Request* form must be submitted to the division with a copy of the worker's payroll records. The payroll record must state the dates (daily or weekly), hours, wage rate, and the worker's gross wage. Payroll records must be a legible copy and compiled in accordance with generally accepted accounting procedures; and~~

~~(102) All requests for reimbursement must be made within one year of the *Wage Subsidy Agreement* ~~termination~~**end** date.~~

(11) Wage Subsidy cannot be used for "regular employment" as defined in OAR 436-110-0005(13) unless the job has been modified to overcome the worker's injury-caused permanent restrictions.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0336 Wage Subsidy – Employer at Injury Activated

Wage Subsidy is activated by the employer at injury as follows:

(1) The job must be within the worker's injury-caused restrictions. If a worksite modification is necessary to meet this requirement, Wage Subsidy will not be approved until the modification is complete, and verified by a representative of the division.

~~(24) The employer must complete and sign a Wage Subsidy Agreement, and send it to the division is combined with Premium Exemption in the timeframes allowed in OAR 436-110-0290.~~

~~(32) The completed and signed job offer must accompany the request as required in OAR 436-110-0290(3), unless it was already submitted with another request. When Premium Exemption is approved, Wage Subsidy is also approved and is effective on the same date.~~

~~(43) The employer at injury may use Wage Subsidy once during an eligibility period.~~

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0337 Wage Subsidy – Worker Activated

A Wage Subsidy may be requested by a worker ~~and employer and the employer reimbursed~~ as follows:

~~(1) The worker must be eligible for Wage Subsidy on the hire date.~~

~~(2) A *Wage Subsidy Agreement* must be completed and signed by the worker and employer and submitted to the division within three years of the ~~start work~~ date **of hire.**~~

~~(3) When approved by the division, the effective date for the Wage Subsidy is the "hire~~

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date" as defined in OAR 436-110-0005.

~~(24) Except as otherwise provided in these rules, a A Preferred Worker may use Wage Subsidy twice during an eligibility period, once with each for two different jobs one employer and once with a different employer. **The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.**~~

(3) If the employer at injury uses Wage Subsidy for a job, the worker cannot use Wage Subsidy for the same job.

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

Stats. Implemented: ORS 656.622

Hist: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0345 ~~Obtained~~ Employment Purchases – General Provisions

(1) An ~~Obtained~~ Employment Purchase is assistance necessary for a worker to **find**, accept, a job or **retain** to continue employment ~~within three years of the start work date. If the employer pays for the same assistance for other workers performing the same job, it does not qualify as an Obtained Employment Purchase. These purchases may be provided for a job with a non-subject employer in Oregon, as long as that employer complies with the appropriate workers' compensation law. **Except as provided in subsection 2(h) of this rule, a**All purchases become the worker's property ~~upon employment in the job for which they are required.~~~~

(2) ~~Obtained~~ Employment Purchases are limited to:

(a) Tuition, books, and fees for instruction provided by an educational entity accredited or licensed by an appropriate body in order to update existing skills or to meet the requirements of an obtained job. Maximum **expenditure per use** ~~reimbursement~~ is \$1000;

(b) Temporary lodging, meals, and mileage to attend instruction when overnight travel is required. The cost of meals, lodging, public transportation, and use of a personal vehicle ~~shall~~**will** be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Lodging, meals, and mileage are limited to a combined period of one month, and the total maximum **expenditure per use** ~~reimbursement~~ is \$500;

(c) Tools and equipment mandatory for employment, ~~such as starter sets. Purchases shall~~**must** not include items the worker possesses, duplicate Worksite Modification items, ~~or~~ vehicles, **or items needed for worksite creation.** Maximum **expenditure per use** ~~reimbursement~~ is \$2,0**5**00;

(d) Clothing required for the job, ~~not including clothing the worker already possesses. Clothing does not include accessories such as jewelry, scarves, wallets, purses, or other items which are not basic clothing.~~ Maximum **expenditure per use** ~~reimbursement~~ is \$400;

(e) Moving expenses for a job if the new worksite is in Oregon and more than 50 miles from the worker's primary residence. When the worker's permanent disability from the injury precludes the worker from commuting the required distance, moving expenses may be provided to move within 50 miles of the worker's primary residence or within the distance the worker commuted for work at claim opening. Moving expenses are limited to one use ~~per eligibility.~~ **Expenditure** ~~Reimbursement~~ is limited to:

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(A) The cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker. The cost of meals, lodging, public transportation, and use of a personal vehicle ~~shall~~**will** be **paid** reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Reimbursement of ~~l~~lodging and meals are limited to a maximum period of two weeks. Reimbursement of ~~m~~Mileage for one personal vehicle is limited to a single one-way trip; and

(B) Rental allowance for the worker's primary residence limited to first month's rent as specified in the rental agreement, non-refundable deposit in an amount not to exceed the first month's rent, and a required credit check for that residence;

(f) Initiation fees, or back dues and one month's current dues, required by a labor union; and

(g) Occupational certification, licenses, and related testing costs, drug screen testing, physical examinations, or membership fees required for the job. Maximum **expenditure** reimbursement is \$500.

(h) Worksite creation costs which are limited to equipment, furnishings or other things the employer needs to create a new job for the worker. All items purchased are the property of the employer. Maximum expenditure per use is \$5,000.

(i) Miscellaneous purchases which do not fit into subsections (a) through (h) of this section. This category may be used to help a worker to find, accept, or retain employment, but does not include a vehicle purchase. Finding employment is limited to necessary purchases to go to an interview in Oregon. This category can be used as often as necessary up to a maximum of \$2,500 per claim opening.

(j) Employment Purchases cannot be used for "regular employment" as defined in OAR 436-110-0005(13) unless the job has been modified to overcome the worker's injury-caused permanent restrictions.

~~(3) Upon division approval, the division will send a copy of the agreement and, if applicable, a completed *Authorization for Payment* form or other instrument of payment.~~

(34) The person or entity that purchased the item(s) ~~A worker, employer, vocational assistance provider, or insurer~~ may request reimbursement by submitting to the division a legible copy of an invoice or receipt showing payment has been made for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid.

~~(5) If the division does not approve the Obtained Employment Purchase, the division will notify the party who requested the assistance in writing. Such notice will give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.~~

~~(46) Costs of Obtained Employment Purchases~~ **may** ~~may~~**will** be paid by reimbursement, by an *Authorization for Payment*, or by other instrument of payment approved by the director.

~~(57) The division will not purchase directly or otherwise assume responsibility for Obtained Employment Purchases.~~

~~(68) Reimbursed costs will not be charged by the insurer to the employer as claim costs or by any other means.~~

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~~(79)~~ All requests for reimbursement must be made within one year of the *Obtained Employment Purchase Agreement* end date.

~~(10)~~ Once the division provides an *Obtained Employment Purchase* item, the division will not replace that item unless the item was stolen, or destroyed by nature or an act of God, or in the case of clothing for new employment, the clothing previously provided is no longer usable. The loss must be uninsured and the division may require a police report to verify the loss.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist.: Amended 12/5/05 as WCD Admin. Order 05-079, eff. 1/1/06

436-110-0346 ~~Obtained Employment Purchases – Employer at Injury Activated~~

Conditions for use of ~~Obtained Employment Purchases~~ by the employer at injury are as follows:

~~(1) Premium Exemption must be active on the worker's hire date in order to use Obtained Employment purchases.~~

~~(12)~~ The employer must submit a completed *Obtained Employment Purchase Agreement* listing item(s) that are required of all the workers to performing the job for which the worker is employed. ~~If no other workers are performing the same job, the division may conduct a local labor market survey to determine whether similar employers require the items to perform the job. If the labor market survey does not support the Obtained Employment Purchase item(s) requested, the division will determine the appropriate Obtained Employment Purchase item(s).~~

~~(32)~~ The employer at injury may use each ~~Obtained Employment Purchase~~ category once during a period of eligibility.

~~(4) Obtained Employment Purchases will only be provided after the worker's hire date, except as follows:~~

~~(a) If purchases are necessary prior to the worker's hire date, the employer at injury must submit the written job acceptance by the worker with the agreement form.~~

~~(b) Subsection (a) of this section does not apply to workers receiving vocational assistance under OAR 436-120. If the worker is receiving vocational assistance, the employer at injury may only request Obtained Employment Purchases for purchases made after the worker's hire date.~~

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist.: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0347 ~~Obtained Employment Purchases – Worker Activated~~

Conditions for use of ~~Obtained Employment Purchases~~ by a worker are as follows:

(1) Except for moving expenses, **and miscellaneous purchases needed to find a job**, the worker and employer must submit a completed *Obtained Employment Purchase Agreement* listing item(s) that are required of all the workers to performing the job, ~~for which the worker is employed. If no other workers are performing the same job, the division may conduct a local labor market survey to determine whether similar employers require the items to perform the job.~~

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If the labor market survey does not support the Obtained Employment Purchase item(s) requested, the division will determine the appropriate Obtained Employment Purchase item(s):

(2) Premium Exemption must be active on the worker's hire date in order to use Obtained Employment Purchases, unless OAR 436-110-0310(5)(i) applies. Obtained Employment Purchases will only be provided after the worker's hire date, except as follows:

(a) If purchase(s) are necessary prior to the worker's hire date and prior to activation of Premium Exemption, the worker and employer must submit the completed and signed *Preferred Worker Identification Card* to the division along with the *Obtained Employment Purchase Agreement* form.

(b) If purchase(s) are necessary prior to the worker's hire date and Premium Exemption has previously been activated, the employer may be required to submit a letter of intent to hire along with the *Obtained Employment Purchase Agreement*.

(c) Subsections (a) and (b) of this section do not apply to workers receiving vocational assistance under OAR 436-120. These workers may only request Obtained Employment Purchases for purchases made after the worker's hire date.

(23) If Obtained Employment Purchases are to be used with a non-subject employer in Oregon, Premium Exemption is not activated.

(43) Except as otherwise provided in these rules, a Preferred Worker may use each Obtained Employment Purchase category twice during a period of eligibility, once **each for two different jobs.** with one employer and once with a different employer. **The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.**

(5) A Preferred Worker who is receiving return to work follow up services under OAR 436-120 may be eligible for Obtained Employment Purchases. This is the only condition under which a worker receiving vocational assistance under OAR 436-120 may be eligible for these purchases:

(64) **Obtained A Preferred Worker may request** Employment Purchases may be requested by a Preferred Worker as follows:

(a) The worker must **contact** all or write the division directly for assistance in receiving Obtained Employment Purchases. **The worker may make the request prior to employment,** Requests made beyond **but not more than** three years **after** from the hire date **of hire** will not be considered.

(b) The *Obtained Employment Purchase Agreement* form must be completed and signed by the worker and employer and submitted to the division. If the request is for moving expenses, **or the miscellaneous category,** only the worker's signature is required.

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

Stats. Implemented: ORS 656.622

Hist: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0350 Worksite Modification – General Provisions

(1) Worksite Modification means altering a worksite in Oregon, or available for

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inspection and modification in Oregon, by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases. Worksite Modification may also include the means to protect modifications purchased by the Preferred Worker Program in an amount not to exceed \$2,500.

(2) Conditions for the use of Worksite Modification assistance are as follows:

(a) Modifications will be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations. In order to determine appropriate Worksite Modifications, the Reemployment Assistance Unit consultants have discretion to use reports by a medical service provider specific to the worker, specific documented "best practices" described by a medical service provider or authority, and their own professional judgement and experience;

(b) A job analysis which includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed;

~~(c) Modifications may be provided to allow a worker to return to regular employment, as described in OAR 436-110-0380;~~

~~(dc)~~ Modifications are limited to a maximum of \$25,000 for one job. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005~~(9)~~;

~~(ed)~~ Modifications not to exceed \$1,000 may be provided which would reasonably be expected to prevent further injury or exacerbation of the worker's accepted condition. Appropriateness of this type of modification will be determined by a Reemployment Assistance Consultant based upon his or her professional judgment and experience, reports by a medical service provider specific to the worker, or specific documented "best practices" described by a medical service provider or authority. Costs of the modification(s) are included in the calculation of the total Worksite Modification costs;

~~(fe)~~ Modifications **are** limited to a maximum of \$2,500 ~~may be provided~~ for on-the-job training under OAR 436-120 or other similar on-the-job training programs **when the trainer is not the employer-at-injury**, including, but not limited to, those administered by the state of Oregon Employment Department and Department of Human Resources, Vocational Rehabilitation Division, ~~except when the employer at injury is the trainer. When the employer at injury is the trainer, a modification of up to \$25,000 may be provided.~~ A modification will not be approved for any other type of training;

~~(gf)~~ Modifications limited to \$2,500 may be provided to protect the items approved in the *Worksite Modification Agreement* from theft, or damage from the weather. Insurance policy premiums will not be paid;

~~(hg)~~ When a vehicle is being modified, the vehicle owner must provide proof of ownership and insurance coverage. The worker must have a valid driver license;

~~(ih)~~ Rented or leased vehicles and other equipment will not be modified;

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(~~ji~~) Modifications must be reasonable, practical, and feasible, as determined by the division. ~~The director shall have final authority to make Worksite Modification decisions involving the use of the fund;~~

(~~kj~~) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer;

(~~l~~) ~~A modification may include tools, equipment, fixtures, or furnishings not customarily provided by an employer, installation of equipment or machinery, or alteration of permanent structures;~~

(~~km~~) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification, ~~and~~ **It may also include** consultative services consisting of engineering, architectural, ergonomic, and similar services **necessary** required to determine the feasibility **of a modification, or** to recommend, ~~to~~ **design, or to perform** a Worksite Modification;

(~~nl~~) Rental of Worksite Modification items and consultative services require division approval and are limited to a cost of up to \$3,500 each. The cost for rental of Worksite Modification items and consultative services does not apply toward the total cost of a Worksite Modification;

(~~om~~) Modification equipment ~~shall~~**will** become the property of the employer, worker, or worker leasing company's client on the "end date" of a *Worksite Modification Agreement* or when the worker's employment ends, whichever occurs first. The division ~~shall~~**will** determine ownership of Worksite Modification equipment prior to approving an agreement and has the final authority to assign property. ~~When assigning ownership of equipment the division will consider several factors including but not limited to the following:~~

(~~A~~) ~~Whether it is unique to the worker, employer, or client;~~

(~~B~~) ~~Whether it is mobile, portable, and easily transferable;~~

(~~C~~) ~~Whether it is integral to the employer's or client's business operation;~~

(~~D~~) ~~Whether it is attached to the employer's or client's property, premises, or equipment;~~

and

(~~E~~) ~~Whether it is installed in or on the worker's personal property or premises;~~

(~~pn~~) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation, and use of a personal vehicle necessary for a worker to participate in one or more of these required activities ~~shall~~**will** be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. The cost of the services described in this subsection does not apply toward the total cost of a Worksite Modification;

(~~qo~~) If the property provided for the modification is damaged, in need of repair, or lost, the division will not repair or replace the property;

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(~~fp~~) The employer ~~shall~~**must** not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property, may result in sanctions under OAR 436-110-0900; and

(~~sq~~) The worker ~~shall~~**must** not dispose of the property provided for the modification while employed in work for which the modification is necessary or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) A **worker, employer or their representative may request** Worksite Modification **assistance.** ~~may be requested by a worker or employer at injury and costs reimbursed as follows:~~

(~~a~~) ~~The worker or employer may develop a Worksite Modification without division assistance or may contact the division directly for Worksite Modification assistance;~~

(~~b~~) ~~Upon contact from the worker or employer, the division will provide instruction on how to proceed with the modification. The division may schedule an on-site visit to assist in identifying appropriate forms of modification;~~

(~~c~~) ~~When the cost of the modification is \$2,500 or less, a *Worksite Modification Agreement (Limited to \$2,500)* form may be completed and sent to the division. The division may request additional support information;~~

(~~d~~) ~~When the cost of the modification is over \$2,500, the division will issue a *Worksite Modification Agreement* form upon determination that the modification is appropriate;~~

(~~e~~) ~~Upon division approval, the division will send copies of the agreement to the parties to the agreement. The division will send the party purchasing the modification an *Authorization for Payment* form or other instrument of payment approved by the director;~~

(~~f4~~) The **person or entity that purchased the item(s)** ~~worker, employer, private rehabilitation organization, or insurer~~ may request reimbursement by submitting to the division proof of payment for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and

(~~g~~) ~~If the division does not approve the Worksite Modification, the division shall notify the party who made the request, in writing. Such notice shall give the basis for the decision, the relevant rule(s), and the appeal rights as given in OAR 436-110-0007.~~

(~~45~~) Costs of **approved** Worksite Modifications ~~may be~~**are** paid by reimbursement, an *Authorization for Payment*, or by other instrument of payment approved by the director.

(~~56~~) The division ~~shall~~**will** not purchase directly or otherwise assume responsibility for Worksite Modifications.

(~~67~~) Reimbursed costs ~~shall~~**will** not be charged by the insurer to the employer as claims costs or by any other means.

(~~78~~) **A division Worksite Modification Consultant will determine if competitive quotes are required.** ~~If the cost for a single item, except for a chair, is over \$2,500, three (3)~~

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~~competitive quotes shall be obtained. If a chair costs over \$1,000, three (3) competitive quotes shall be obtained. Quotes are competitive when they are from three different vendors and the items being quoted meet the same specifications. If three competitive quotes are not available, documentation of efforts to obtain three competitive quotes shall be provided. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to, past vendor performance, delivery time, and vendor availability to service or maintain the item.~~

~~(89)~~ All requests for reimbursement ~~shall~~**must** be made within one year of the *Worksite Modification Agreement* ~~termination~~**end** date.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0351 Worksite Modification – Employer at Injury Activated

Conditions for use of Worksite Modifications by the employer at injury are as follows:

(1) The employer at injury may use Worksite Modification assistance once for a job provided for their injured worker, or a second time if the worker changes to another job with the employer at injury within ~~allowable~~**the** timeframes **allowed in OAR 436-110-0290(1)**.

(2) Modifications are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005~~(8)~~**(9)**.

(3) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* prior to any reimbursement or *Authorization for Payment*.

(4) Modifications may be provided for requests received within 180 days from the worker's claim closure date. Additional modifications may be provided under an approved agreement by addendum for requests received within three years from the date the worker started work for the employer in employment for which the Worksite Modification request was made.

Stat. Auth.: ORS 656.726(4), 656.622
 Stats. Implemented: ORS 656.622
 Hist: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0352 Worksite Modification – Worker Activated

Conditions for use of Worksite Modification assistance by the worker are as follows:

(1) The division must approve, by authorized signature, a completed and signed *Worksite Modification Agreement* form, prior to any reimbursement or *Authorization for Payment*.

(2) Modifications may be provided for requests received within three years from the following **date of hire**:

~~(a) The date the worker started work for the employer in employment for which the Worksite Modification request was made;~~

~~(b) The date the worker returned to regular employment or substantially similar employment if the employment began prior to claims closure; or~~

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~~(c) The date of claim closure.~~

(3) A worker may use Worksite Modification assistance once with one employer and once with a second employer, or twice with the same employer if there is a job change. **The number of allowable uses will be restored if there is a subsequent claim closure, and the worker is unable to return to regular employment.**

(4) Modifications after June 30, 1990, are limited to a maximum of \$25,000 on the claim which qualified the worker for assistance. A modification over \$25,000 may be provided for a worker with an exceptional disability as defined in OAR 436-110-0005(9). This maximum is not reduced by the use of Worksite Modifications by the employer at injury.

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

Stats. Implemented: ORS 656.622

Hist: Filed 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

436-110-0380 — Return to Regular Employment

~~(1) If the worker has an accepted Oregon disabling claim and is unable to return to regular employment as a result of permanent restrictions from the accepted conditions of that claim, Worksite Modification may be provided to allow the worker to return to regular employment or employment substantially similar in nature, duties, and responsibilities, regardless of whether the worker has received a Preferred Worker Card. The employment for which benefits are requested by the worker or employer at injury will not be considered to have started until all necessary modifications are in place and verified by a representative of the division.~~

~~(2) The division shall determine a substantial modification based upon the extent of the modifications necessary to accommodate the worker's permanent limitations from compensable Oregon injuries. The modifications provided must be sufficient for the worker to perform all required job duties within these restrictions. The modification is "substantial" if any one of the factors given in subsections (a), (b), and (c) of this rule apply. When making its decision, the division may consider other factors in addition to whether the modification significantly impacts the following:~~

- ~~(a) Changes how the worker performs essential job duties;~~
- ~~(b) Reduces the physical exertion required; or~~
- ~~(c) Affects the employer's work process.~~

~~(3) The provision of the following Worksite Modification items or similar items by themselves do not constitute a substantial modification:~~

- ~~(a) Ergonomic chair;~~
- ~~(b) Anti fatigue mat;~~
- ~~(c) Slant board;~~
- ~~(d) Anti-vibration wrap for tools;~~
- ~~(e) Special pen or pencil;~~
- ~~(f) Footrest;~~

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~~(g) Wristrest; or~~

~~(h) Changing the height of a work surface.~~

~~(4) If the division determines the modification is not substantial as defined in sections (2) and (3) of this rule, Premium Exemption cannot be activated. If the worker does not have a Preferred Worker Card, none will be issued.~~

~~(5) If the division determines the modification is substantial as defined in sections (2) and (3) of this rule the following will occur:~~

~~(a) If the worker does not have a Preferred Worker Identification Card, the division will issue a card after the modification is in place.~~

~~(b) If the worker already has a Preferred Worker Identification Card, it may be activated. The worker will be notified by the division in writing of his or her rights under these rules.~~

~~(c) If the employer at injury requested the assistance the division will notify the employer in writing and provide instructions about activating Premium Exemption.~~

Stat. Auth: ORS 656.622, 656.726(4)

Stats. Implemented: ORS 656.622

Hist: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05

Repealed xx/xx/xx as WCD Admin. Order xx-xxx, eff. xx/xx/xx

436-110-0850 Audits

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

(2) An insurer or employer ~~shall~~**must** maintain claim records, notices, worker payroll records, reports, receipts, and documentation of payment supporting reemployment assistance costs for which reimbursement has been requested or expenditure by *Authorization for Payment* has been made. These records ~~shall~~**must** be maintained for a period of three years after the last reimbursement request or expenditure by *Authorization for Payment*.

(3) The division reserves the right to visit the worksite to determine compliance with the agreement under which reemployment assistance has been provided.

Stat. Auth.: ORS 656.455, 656.622, 656.726(4), 731.475;

Stats. Implemented: ORS 656.455, 656.622, 731.475

Hist: Amended 8/14/01 as WCD Admin. Order 01-056, eff. 10/1/01

436-110-0900 Sanctions

(1) Any person who knowingly makes any false statement or representation to the director or an employee of the director for the purpose of obtaining any benefit or payment from the Preferred Worker Program or who knowingly misrepresents the amount of a payroll, or knowingly submits a false payroll report, is subject to penalties under ORS 656.990.

(2) Reasons for the director to sanction an individual certified under OAR 436-120, a

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vocational assistance provider authorized under OAR 436-120, an agency of the State of Oregon, an insurer, an employer, or a Preferred Worker include, but are not limited to, the following:

(a) Misrepresenting information in order to obtain reemployment assistance. Two examples of misrepresentation are:

(A) Changing a job description or job title where there are not corresponding job duty changes in order to obtain benefits; and

(B) Obtaining a worker's signature on incomplete, incorrect, or blank agreements or reimbursement requests;

(b) Making a serious error or omission which resulted in the division approving a *Preferred Worker Program Agreement*, issuing a Preferred Worker card, or reimbursing claim costs in error;

(c) Failing to abide by the terms and conditions of a *Preferred Worker Program Agreement*;

(d) Failing to abide by the provisions of these rules or ORS 656.990;

(e) Failing to return required receipts or invoices;

(f) Submitting false reimbursement requests or job analyses;

(g) Altering an *Authorization for Payment* form or purchasing unauthorized items; or

(h) Failing to return a Preferred Worker card if requested by the division.

(3) Sanctions by the director may include one or more of the following:

(a) Ordering the person being sanctioned to repay the department for reemployment assistance costs incurred, including the department's legal costs;

(b) Prohibiting the person being sanctioned from negotiating or arranging reemployment assistance for such period of time as the director deems appropriate;

(c) Decertifying an individual or vocational assistance provider under the authority of OAR 436-120;

(d) Ordering an employer or worker ineligible for reemployment assistance for a specific period of time; and

(e) Pursuing civil or criminal action against the party.

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

Stats. Implemented: ORS 656.622, 656.990

Hist: Amended 5/24/05 as WCD Admin. Order 05-058, eff. 7/1/05