



# Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services  
Workers' Compensation Division  
350 Winter St. NE  
PO Box 14480  
Salem, OR 97309-0405  
1-800-452-0288 or 503-947-7810  
[www.wcd.oregon.gov](http://www.wcd.oregon.gov)

Sept. 15, 2009

## **Proposed Changes to Workers' Compensation Rules**

The Department of Consumer and Business Services, Workers' Compensation Division proposes changes to OAR chapter 436.

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?** Oct. 26, 2009, 9:00 a.m.

**Where is the hearing?** Labor & Industries Building  
350 Winter Street NE, Room F (basement)  
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](mailto:fred.h.bruyns@state.or.us)  
Phone: 503-947-7717; Fax: 503-947-7514

**The closing date for written comments is Oct. 29, 2009.**

**How can I get copies of the proposed rules?**

On the Workers' Compensation Division's Web site –

<http://wcd.oregon.gov/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.

Department of Consumer & Business Services,  
Workers' Compensation Division

OAR CHAPTER 436

Agency and Division	Address	Administrative Rules Chapter Number
Fred Bruyns	PO Box 14480, Salem, OR 97309-0405; 350 Winter Street NE, Rm 27, Salem, OR 97301-3879	503-947-7717 Fax 503-947-7514
Rules Coordinator	Address	Telephone

**RULE CAPTION**

**Workers' compensation claims administration, medical services and billing, reemployment assistance, and attorney fees**

Hearing date	Time	Location	Hearings Officer
10-26-2009	9:00 a.m.*	Room F (basement), Labor & Industries Building 350 Winter Street NE, Salem, Oregon	Fred Bruyns

\*NOTE: The hearing will begin at 9:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through Oct. 29, 2009.

**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 436-001-0420; 436-001-0430; 436-001-0440

**AMEND:** OAR 436-030; 436-060; 436-105; 436-110; 436-120; and  
OAR 436-001-0003; 436-001-0019; 436-009-0010; 436-009-0070; 436-010-0008; 436-010-0240; 436-010-0265; 436-010-0280; 436-140-0005; 436-150-0005; 436-150-0010; 436-150-0030; 436-160-0310; 436-160-0340

**REPEAL:** OAR 436-075-0110

**AMEND AND RENUMBER:** From OAR 436-001-0265 to 436-001-0400; from 436-001-0265 to 436-001-0410

ORS 656.726(4)

Stat. Auth.

Other Authority

ORS chapter 656, as amended by Oregon Laws (OL) 2009: House Bill (HB) 2045 – OL 2009, ch. 32; HB 2195 – OL 2009, ch. 35; HB 2197 – OL 2009, ch. 36; HB 2705 – OL 2009, ch. 312; HB 2707 – OL 2009, ch. 313; HB 3345 – OL 2009, ch. 526; and ORS chapter 656, as amended by OL 2007, Senate Bill 559, ch. 241

Stats. Implemented

**RULE SUMMARY**

NOTE: "Insurer" in this summary includes self-insured employers. The agency proposes to amend OAR chapter 436 to improve organization, clarity and consistency, and to eliminate redundancy. More specifically:

**The agency proposes to amend OAR chapter 436, division 001, "Procedural Rules Governing Rulemaking and Hearings." These proposed rules:** Implement House Bill 3345 by raising the maximum attorney fee payable under ORS 656.385 from \$2,000 to \$3,000, and making corresponding changes to the attorney fee matrix. The proposed rules consolidate rules related to attorney fees into OAR 436-001 and remove them from OAR 436-010, 060, and 120.

**The agency proposes to amend OAR chapter 436, division 009, "Oregon Medical Fee and Payment Rules." These proposed rules:** Clarify the types of identification numbers providers must include on their medical bills; allow a medical service provider to submit bills for independent medical examinations in the form or format agreed to by the insurer and the medical service provider.

**The agency proposes to amend OAR chapter 436, division 010, "Medical Services." These proposed rules:** Implement HB 2045 by including chiropractors among those health care providers who may make findings of impairment (when serving as the worker's attending physician); implement HB 2197, which allows a medical service provider who is not qualified to be an attending physician to provide compensable medical service to an

injured worker for a period of 30 days or for 12 visits from the date of the first visit on the initial claim (rather than the date of injury), whichever first occurs, without the authorization of an attending physician; defer to OAR 436-001 for awarding attorney fees under ORS 656.385; require use of a release form (in addition to Form 801 or 827) for release of HIV-related information; clarify requirements for collection of the workers' Social Security number on Form 827; allow and describe use of Form 827 to make claims for new or omitted medical conditions; require the health care provider to give the worker a copy of Form 3283 when giving the worker a copy of Form 827. (The agency prints nearly all 827s used by workers and providers, and will print Form 3283 as an attachment to Form 827.)

**The agency proposes to amend OAR chapter 436, division 030, "Claim Closure and Reconsideration." These proposed rules:** Require that a Notice of Closure include information about a worker's right to be represented by an attorney (now stated in ORS 656.270, to be repealed effective 1/1/2010 – HB 2197) and right to request a vocational eligibility evaluation (related to limits to requirements for vocational eligibility evaluations in HB 2705); clarify procedures for administrative claim closure; provide that requests for reconsideration of claim closures may be made by telephone; explain that the 14-day time frames for parties to submit certain records relevant to the reconsideration process begin with the director's notice of the start date of the reconsideration; require that evidence stored by the parties on audio media may be submitted to the director (for the purpose of reconsideration) only in transcribed form.

**The agency proposes to amend OAR chapter 436, division 060, "Claims Administration." These proposed rules:** Specify when and how to issue claim-related notices after a worker is deceased, regardless of the cause of death; clarify requirements for the worker's employer to give the worker a copy of Form 3283, "A guide for workers recently hurt on the job," when the worker files a claim; lengthen the time period that an ongoing request by the claimant's attorney for future claim-related documents remains in effect; specify that time limits for sending most information to the director begin with the mailing date of the agency's letter or order; implement HB 2707 by prescribing notice requirements when the insurer learns that the worker was employed in more than one job at the time of injury; exclude secondary employment by Oregon subject volunteers from the calculation of supplemental disability; require notice to the worker, as part of the notice of claim acceptance, about criteria for reimbursement of claim-related expenses; describe timeliness criteria, notice requirements, and consent requirements related to the electronic payment of benefits to workers and beneficiaries; implement HB 3345 by setting conditions for the payment of penalty assessments to workers and fees to attorneys related to late payment of disputed claim settlement amounts.

**The agency proposes to amend OAR 436-075, "Retroactive Program," OAR 436-140, "Construction Carve-Out Programs," and OAR 436-150, "Workers' Benefit Fund Claims Program." These proposed rules:** Eliminate references to "guaranty contract," because Senate Bill 559 (2007 Session) replaced the guaranty contract with policy-based proof of coverage and reporting.

**The agency proposes to amend OAR 436-105, "Employer-at-Injury Program (EAIP)." These proposed rules:** Define "consumables," as purchases required to support the functioning of newly purchased tools or equipment, and allow purchase of consumables under the EAIP; clarify that a worksite modification must be related to limitations that resulted in the worker's EAIP eligibility or prevent the worsening of an accepted condition; clarify minimum reimbursement thresholds and when administrative costs are reimbursable.

**The agency proposes to amend OAR 436-110, "Preferred Worker Program (PWP)." These proposed rules:** Clarify the definition of "date of hire"; revise definitions of "premium" and "reimbursable wages" to be consistent with the definitions in OAR 436-105; implement HB 2197 by clarifying procedures for use of premium exemption under ORS 656.622; provide a more specific time limit for requesting claims cost reimbursement; create a new employment purchase type – placement assistance provided by a certified vocational counselor or any public or private agency that provides placement services, reimbursable if the assistance results in employment that the preferred worker retains for at least 90 days; provides that placement assistance may not be combined with vocational assistance under OAR 436-120.

**The agency proposes to amend OAR 436-120, "Vocational Assistance to Injured Workers." These proposed rules:** Define several terms used in division 120 – "delivered," "director," "filed," "likely eligible," and "mailed"; defer to OAR 436-001 for awarding attorney fees under ORS 656.385; provide that modified or new employment that results from an employer-at-injury-activated use of the PWP is considered "suitable" 12 months after the department determines a worksite modification is complete; implement HB 2705 by eliminating the requirement to complete a vocational eligibility evaluation if the worker is released to regular or other suitable work with the employer at injury or aggravation; specify that the insurer is not required to do an eligibility evaluation if the worker is deceased or has a permanent total disability award; implement HB 2195 by allowing an insurer, without approval

by the director, to extend time loss up to 21 months; allow further training to a worker who has completed one training plan if there is a reasonable cause to do so; publish vocational fee schedule maximums as percentages of Oregon's state average weekly wage rather than fixed dollar amounts; to implement HB 2195, provide for "registration" rather than "authorization" of vocational assistance providers; require certified counselors who are subject to continuing education requirements under these rules to take at least eight hours (currently 7 ½ hours) of training in ethical practices and at least six hours of training on the vocational assistance and reemployment assistance rules during the five years before certification renewal.

**The agency proposes to amend OAR 436-160, "Electronic Data Interchange." These proposed rules:** Specify whether certain proof-of-coverage data elements should be mandatory or optional.

**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 or written testimony to: Fred Bruyns, rules coordinator; phone 503-947-7717; fax 503-947-7514; e-mail [fred.h.bruyns@state.or.us](mailto: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 at no charge from WCD Publications, 503-947-7627.

**Oct. 29, 2009**

(Last day to submit written comments  
to the rules coordinator)

(1)

*/s/ Jerry R. Managhan, for*

9/15/2009

Authorized Signer and Date

**John L. Shilts, Administrator, Workers' Compensation Division**

Printed name

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm 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

OAR CHAPTER 436

Agency and Division

Administrative Rules Chapter Number

**Workers' compensation claims administration, medical services and billing, reemployment assistance, and attorney fees**

Rule Caption

**In the Matter of:** The Amendment of:

- 436-001, Procedural Rules for Rulemaking and Hearings
- 436-009, Oregon Medical Fee and Payment Rules
- 436-010, Medical Services
- 436-030, Claim Closure and Reconsideration
- 436-060, Claims Administration
- 436-075, Retroactive Program
- 436-105, Employer-at-Injury Program
- 436-110, Preferred Worker Program
- 436-120, Vocational Assistance to Injured Workers
- 436-140, Construction Carve-Out Programs
- 436-150, Workers' Benefit Fund Claims Program
- 436-160, Electronic Data Interchange

**Statutory Authority:** ORS 656.726(4)

**Other Authority:**

**Stats. Implemented:** ORS chapter 656, as amended by Oregon Laws (OL) 2009: House Bill (HB) 2045 – OL 2009, ch. 32; HB 2195 – OL 2009, ch. 35; HB 2197 – OL 2009, ch. 36; HB 2705 – OL 2009, ch. 312; HB 2707 – OL 2009, ch. 313; HB 3345 – OL 2009, ch. 526; & ORS chapter 656, as amended by OL 2007, Senate Bill 559, ch. 241

**Need for the Rules:** To implement legislation passed by the 2007 and 2009 Legislatures; to improve the effectiveness of claims administration, regulatory and dispute resolution functions of the agency, vocational assistance, and reemployment assistance programs under ORS 656.622.

**Documents Relied Upon, and where they are available:** Enrolled House Bills 2045, 2195, 2197, 2705, 2707 and 3345; Enrolled Senate Bill 559 (2007); fiscal impact data; "Issues" document presented to stakeholder advisory committees; other advisory committee meeting records; and written advice. These records are available for public inspection in the 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:** The agency projects fiscal/economic impacts as follows:

NOTE: "Insurer" in this document includes self-insured employers.

The proposed rules will implement HB 3345, which provides for new or increased attorney fees payable by insurers to workers' attorneys and new or increased penalties payable to workers by insurers.

ORS 656.262(12) will require payment of penalty assessments to workers and fees to attorneys related to late payment of disputed claim settlement (DCS) amounts. Assessments and fees are only triggered if payment of the DCS is late and the insurer fails to pay the DCS within five days of notice by the worker or the worker's attorney. Therefore, the agency estimates that the overall fiscal impact will be minor.

In 2008, the agency ordered payment of approximately \$189,000 by insurers to worker's attorneys who prevailed in medical and vocational disputes. HB 3345 raised the maximum payable under ORS 656.385 in these cases from \$2000 to \$3000, and the proposed attorney fee matrix increases all amounts payable by 50% - for equivalent results achieved and time devoted by the attorney. The agency projects the maximum fiscal impact of this change is 50% above current costs or less than \$100,000 per year, payable by insurers to workers' attorneys.

Proposed rules explain that the matrix may be used as a guide for awarding attorney fees for prevailing in disputes under ORS 656.262(11), which would add slightly to insurers' costs.

The agency estimates that the overall fiscal and economic impact of proposed rule changes related to attorney fees will be substantially under \$150,000 per year, representing increased costs to insurers and increased payments to workers' attorneys.

The proposed rules will implement HB 2045 by including chiropractors among those health care providers who may make findings of impairment (when serving as the worker's attending physician). The agency estimates that this change will have a small positive fiscal impact on chiropractors and also a positive impact on insurers, because chiropractors will not have to refer workers to other physicians to perform closing medical examinations, which can increase medical costs and delay claim closure.

The proposed rules require that evidence stored by the parties on audio media may be submitted to the director (for the purpose of reconsideration of claim closure) only in transcribed form. Insurers have advised the agency that this will increase their costs substantially. The agency agrees that transcription will entail significant costs, though most insurers do not submit audio files as evidence, so costs will vary according to insurers' business practices.

The proposed rules lengthen the time period that an ongoing request by the claimant's attorney for future claim-related documents remains in effect. At the rulemaking advisory committee meeting, insurer representatives present explained that it has been common practice to continue providing documents longer than the 90 days currently required. The agency projects that this change may slightly increase insurers' costs. However, attorneys and insurers should save some time and money by not having to make and process multiple requests for records.

The proposed rules facilitate the electronic payment of benefits to workers and beneficiaries. For those workers/beneficiaries and insurers that choose to participate, the agency projects that electronic payment will result in faster payment of benefits, as well as cost savings for insurers.

The proposed rules allow purchase of "consumables" under the Employer-at-Injury Program (EAIP). The agency estimates that this will slightly increase costs to the Workers' Benefit Fund, with a corresponding benefit to employers and workers who participate in the EAIP.

The proposed rules create a new employment purchase type for job-placement assistance and will increase costs to the Workers' Benefit Fund. The agency cannot project how much placement assistance will be provided, but does project a significant cost to the Workers' Benefit Fund, with a corresponding positive impact on vocational rehabilitation providers and to the workers who are successfully returned to work.

The proposed rules will implement HB 2705, which eliminates the requirement to complete a vocational eligibility evaluation if the worker is released to regular or other suitable work with the employer at injury or aggravation, thus reducing the number of evaluations required. The agency estimates that this change will have a small positive fiscal impact on Oregon insurers, and a small negative impact on vocational rehabilitation organizations that have conducted the evaluations.

The proposed rules will implement HB 2195 by allowing an insurer, without approval by the director, to extend time loss to 21 months – for a worker engaged in training. The agency estimates this change will streamline the extension process and slightly reduce costs to insurers and the agency.

The proposed rules allow further training to a worker who has completed one training plan if there is a reasonable cause to do so. Although the agency expects this to occur infrequently, this change may slightly increase insurers' costs for vocational assistance, and increase payments to vocational assistance providers and training facilities. Affected worker would benefit from increased wage earning capacity.

Additional proposed rule changes should either have no significant fiscal impact on any party or be slightly positive in effect to the extent the agency achieves its objectives of improved clarity of its rules and general streamlining of requirements affecting claims administration. However, the agency welcomes public input on potential fiscal impacts of any of the proposed rule changes.

#### **Statement of Cost of Compliance:**

##### **1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

Proposed rule changes will increase demand on the Workers' Benefit Fund. The agency projects that the fund has sufficient reserves to meet the demand. Otherwise, proposed changes should not have any significant effect on other state agencies or local governments, and should not affect the general public at all except as described under "Fiscal and Economic Impact" above.

**2. Cost of compliance effect on small business (ORS 183.336):**

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:** Primarily, 1) workers' compensation attorneys retained by injured workers; and 2) vocational rehabilitation organizations (registered under OAR 436-120). 190 attorneys from 147 firms represented injured workers in cases before the Workers' Compensation Board during the past year. Bulletin 151 lists 106 vocational rehabilitation providers that have been registered by the Department of Consumer and Business Services. Not all of these providers are small businesses as defined in ORS 183.310, but approximately 100 vocational assistance providers are small businesses.
- b. Projected reporting, record-keeping and other administrative activities required for compliance, including costs of professional services:** None. The agency projects overall positive economic effects of the proposed rule changes on both attorneys and vocational assistance providers.
- c. Equipment, supplies, labor, and increased administration required for compliance:** None. The agency projects overall positive economic effects of the proposed rule changes on both attorneys and vocational assistance providers.

**How were small businesses involved in the development of this rule?** Attorneys who represent injured workers and vocational rehabilitation professionals participated on rulemaking advisory committees and submitted written advice to the agency.

**Administrative Rule Advisory Committee consulted?** Yes, the agency consulted with rulemaking advisory committees on August 7, 10, 11, 25, and 27, 2009.

<i>/s/ Jerry R. Managhan, for</i>	John L. Shilts, Administrator	
<b>Signature</b>	Workers' Compensation Division	9/15/2009
	<b>Printed name</b>	<b>Date</b>

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION



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

*Proposed Rules*

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**NOTE: 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**

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**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.

(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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**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.

(4) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

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**WORKERS' COMPENSATION DIVISION**  
*Proposed Rules* **PREFERRED WORKER PROGRAM**

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(5) "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.

(6) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) "Division approval" means a Preferred Worker agreement signed by an authorized division representative.

(8) "Employer at injury" means the organization in whose employ the worker sustained the injury or occupational disease.

(9) "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 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.

(10) "Fund" means the Workers' Benefit Fund.

(11) "Insurer" means the insurance company or self-insured employer responsible for the workers' compensation claim.

(12) "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.~~ **the monies paid to an insurer for the purpose of purchasing workers' compensation insurance.**

(13) "Regular employment" means the job the worker held at the time of the injury, claim for aggravation, or own motion opening.

(14) "Reimbursable wages" means ~~the gross taxable wages paid a worker for services performed~~ **the worker's gross wages for the Wage Subsidy period.**

(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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx**

#### **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

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**WORKERS' COMPENSATION DIVISION**  
*Proposed Rules* **PREFERRED WORKER PROGRAM**

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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 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.

(3) The request for reconsideration must specify the reasons why the decision is appealed. No reconsideration 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 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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

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

(1) The insurer of the employer at injury 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 must notify the worker and employer at injury in writing of the

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reemployment assistance available from the fund. A notice 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 must appear in bold type and contain the following language:

**The Preferred Worker Program helps Oregon's injured workers get back to work. 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, or FAX (503) 947-7581.**

**For the Medford office call: (541) 776-6032, 1-800-696-7161, or FAX (541) 776-6022.**

**Or write the Preferred Worker Program at: 350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405; or 1840 Barnett Road, Suite C, Medford, Oregon 97504-8293.**

(4) Under section (2) of this rule, the Notice to the Employer 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, or FAX (503) 947-7581.**

**For the Medford office call: (541) 776-6032, 1-800-696-7161, or FAX (541) 776-6022.**

**Or write the Preferred Worker Program at: 350 Winter Street NE, P.O. Box 14480, Salem, Oregon 97309-0405; or 1840 Barnett Road, Suite C, Medford, Oregon 97504-8293.**

(5) The insurer 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

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(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 6/12/08 as WCD Admin. Order 08-058, eff. 7/1/08

**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 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 180<sup>th</sup> 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 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.

(4) 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.

(5) 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.: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**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 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;

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(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;

(b) ~~Because of injury-caused limitations, m~~Medical evidence indicates **that, because of injury-caused limitations,** 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;

(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) 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 Employment Purchases;

(5) 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.

(6) A worker found ineligible because he/she was not authorized to work in the United

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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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx

**436-110-0320 Preferred Worker Identification Card**

(1) The division issues a Preferred Worker Identification card to eligible workers. The card identifies the worker as being eligible to offer an employer Preferred Worker Program assistance. If a Preferred Worker loses the card, the division will issue a replacement card.

(2) 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);

(b) When the worker or their representative request a card, and the worker is eligible; or

(c) Any other time the division finds a worker eligible.

(3) 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(4) applies.

Stat. Auth.: ORS 656.622, 656.726(4)  
 Stats. Implemented: ORS 656.622  
 Hist: Amended 6/12/08 as WCD Admin. Order 08-058, eff. 7/1/08

**436-110-0325 Premium Exemption General Provisions**

**(1) The purpose of Premium Exemption is to provide an incentive to employers to hire Preferred Workers.**

**(2) Premium Exemption releases an employer from paying workers' compensation insurance premiums and premium assessments on a Preferred Worker for three years from the effective date. While 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 must start paying insurance premiums and premium assessments when Premium Exemption ends.**

**(3) Premium Exemption cannot be used for regular employment unless the job is modified to accommodate the worker's injury-caused limitations.**

**(4) If the employer is the employer-at-injury, and within 30 days from the date of hire the employer notifies the insurer they have hired a Preferred Worker, Premium Exemption is effective on the date of hire.**

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**(5) If the employer is not the employer-at-injury, the worker discloses Preferred Worker status to that employer, and the employer notifies the insurer within 30 days from the date of hire that they have hired a Preferred Worker, Premium Exemption is effective on the date of hire.**

**(6) If Preferred Worker eligibility has not been determined on the date of hire, the worker or the employer-at-injury that is reemploying the worker may request eligibility determination. The date the division determines the worker is eligible is the eligibility date and Premium Exemption is effective on the eligibility date.**

**(7) 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 and the worker's Preferred Worker status. The claim costs for the injury are reimbursed under OAR 436-110-0330.**

~~(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.~~

~~(3) 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. 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 must start paying insurance premiums and premium assessments when Premium Exemption ends.~~

~~(4) 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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended 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

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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 independent medical examinations necessary to determine compensability of the claim;

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

(e) The claim 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 must request Claim Cost Reimbursement as follows:

(a) Requests for reimbursement must be made within one year of the **end of the** quarter within which payment was made, ~~or within six months following notification by the employer that a preferred worker incurred an injury or disease, whichever is later;~~

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

(c) Reimbursement documentation must include, but ~~not be~~ **is not** 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 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

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amount reimbursed. Reimbursed amounts must be refunded to the division and, as applicable, future reimbursements **will be** 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;

(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 Identification Card, and later notifies its insurer that the injury or disease was incurred by a Preferred Worker, the insurer must correct all records previously filed which include claim costs in any dividend, retrospective rating, or any claim valuation for experience rating performed.~~

~~(6)(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 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 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

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Stats. Implemented: ORS 656.622  
Hist.: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended 6/12/08 as WCD Admin. Order 08-058, eff. 7/1/08  
Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx

#### **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) The effective date of a Wage Subsidy **Agreement** 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 subsidy for a training plan under OAR 436-120;
- (7) A worker-activated and employer at injury-activated wage subsidy can not be used for the same job with the employer at injury;
- (8) 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);
- (9) 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

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must be a legible copy and compiled in accordance with generally accepted accounting procedures; and

(10) All requests for reimbursement must be made within one year of the *Wage Subsidy Agreement* 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  
 Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx

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

Wage Subsidy ~~is~~ may be 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.

(2) The employer must complete and sign a Wage Subsidy Agreement, and send it to the division in the timeframes allowed in OAR 436-110-0290.

(3) 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.

(4) 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: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx

**436-110-0337 Wage Subsidy – Worker Activated**

A Wage Subsidy may be requested by a worker as follows:

(1) The worker and employer must complete and sign a ~~A~~ *Wage Subsidy Agreement* ~~must be completed and signed by the worker and employer and submitted~~ the agreement to the division within three years of the date of hire.

(2) A Preferred Worker may use Wage Subsidy twice, once each for two different jobs. 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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx

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**436-110-0345 Employment Purchases – General Provisions**

(1) An Employment Purchase is assistance necessary for a worker to find, accept, or retain employment **in Oregon**. 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. **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.** Except as provided in subsection 2(h) of this rule, all purchases become the worker's property.

(2) 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 is \$1,000;

(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 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 is \$500;

(c) Tools and equipment mandatory for employment. ~~Purchases must not include i~~Items the worker possesses, duplicate Worksite Modification items, vehicles, or items needed for worksite creation **are not Employment Purchases under this rule.** Maximum expenditure per use is \$2,500;

(d) Clothing required for the job. Maximum expenditure per use 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. Expenditure is limited to:

(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 will be paid at the rate of reimbursement for State of Oregon classified employees as published in *Bulletin 112*. Lodging and meals are limited to a maximum period of two weeks. 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,

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physical examinations, or membership fees required for the job. Maximum expenditure 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) Placement assistance requested by a preferred worker and provided by a certified vocational counselor or any public or private agency that provides placement services, that resulted in employment that the preferred worker retained for at least 90 days. Maximum expenditure is \$2000. Placement assistance may not be combined with vocational assistance under OAR 436-120; and**

~~(i)~~**(j)** Miscellaneous purchases which do not fit into subsections (a) through ~~(i)~~ of this section, **subject to approval by the director.** 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) The person or entity that purchased the item(s) 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.

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

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

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

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

Stat. Auth.: ORS 656.726(4), 656.622  
 Stats. Implemented: ORS 656.622  
 Hist.: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
**Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx**

#### **436-110-0346      Employment Purchases – Employer at Injury Activated**

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

(1) The employer must submit a completed *Employment Purchase Agreement* listing item(s) that are required of the worker to perform the job for which the worker is employed.

(2) The employer at injury may use each Employment Purchase category once.

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

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Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**436-110-0347      Employment Purchases – Worker Activated**

Conditions for use of 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 *Employment Purchase Agreement* listing item(s) that are required of the worker to perform the job.

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

(3) Except as otherwise provided in these rules, a Preferred Worker may use each Employment Purchase category twice, once each for two different jobs. 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) A Preferred Worker may request Employment Purchases as follows:

(a) The worker must contact the division directly for assistance in receiving Employment Purchases. The worker may make the request prior to employment, but not more than three years after the date of hire.

(b) The *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: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**436-110-0350      Worksite Modification – General Provisions**

(1) Worksite Modification means altering a worksite in Oregon, or available for 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 ~~r~~Reemployment ~~a~~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 judgment and experience;

(b) A job analysis ~~which~~ that 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;

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(c) 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);

(d) Modifications not to exceed \$1,000 may be provided ~~which~~ **that** would reasonably be expected to prevent further injury or exacerbation of the worker's accepted condition. **A reemployment assistance consultant will determine the** ~~A~~ 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;

(e) Modifications are limited to \$2,500 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. A modification will not be approved for any other type of training;

(f) 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;

(g) 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;

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

(i) Modifications must be reasonable, practical, and feasible, as determined by the division.;

(j) 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;

(k) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification. It may also include consultative services necessary to determine the feasibility of a modification, or to recommend or design a Worksite Modification;

(l) 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;

(m) Modification equipment 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 will determine ownership of Worksite Modification equipment prior to approving an agreement and has the final authority to assign property;

(n) 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

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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 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;

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

(p) The employer 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

(q) The worker 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.

(4) The person or entity that purchased the item(s) 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

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

(6) The division will not purchase directly or otherwise assume responsibility for Worksite Modifications.

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

(8) A division Worksite Modification Consultant will determine if competitive quotes are required.

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

Stat. Auth.: ORS 656.726(4), 656.622  
Stats. Implemented: ORS 656.622  
Hist: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07  
Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx

**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 the timeframes allowed in OAR 436-110-0290(1).

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(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(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: Amended 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**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 date of hire.

(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

**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 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 must be maintained for a period of three years after the last reimbursement request or expenditure by *Authorization for Payment*.

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(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 11/1/07 as WCD Admin. Order 07-066, eff. 12/1/07

**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 **who** 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 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 **in order to obtain benefits** 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

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(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

Amended xx-xx-xx as WCD Admin. Order xx-xxx, eff. xx-xx-xx