

**ADMINISTRATIVE ORDER NO. 1-1987
EFFECTIVE MARCH 16, 1987**

**OREGON DEPARTMENT OF INSURANCE AND FINANCE
WORKERS' COMPENSATION DIVISION
OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 110**

ASSISTANCE FROM THE WORKERS' REEMPLOYMENT RESERVE

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

436-110-001 AUTHORITY FOR RULES

The Director has adopted OAR 436-110 by the Director's authority under ORS 656.622 and ORS 656.726(3).

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Renumbered from OAR 436-63-001, 5/1/85
Amended 2/20/87 as WCD Admin. Order 1-1987; eff. 3/16/87

436-110-002 PURPOSE OF RULES

The purpose of these rules is:

- (1) To prescribe the terms of eligibility for reemployment assistance to workers and Oregon employers who reemploy or hire workers with disabling compensable injuries or diseases, and the nature and extent of the assistance, pursuant to ORS 656.622; and,
- (2) To establish criteria for payment and reimbursement from the reserve created in ORS 656.622.

Hist: Filed 2/20/87 as WCD Admin Order 1-1987; eff. 3/16/87

436-110-003 APPLICABILITY OF RULES

(1) These rules govern all requests for assistance from the Workers' Reemployment Reserve filed with the Director on and after March 16, 1987, except for assistance to sheltered workshops as provided in ORS 656.530.

(2) Requests for second injury relief filed in accordance with rules adopted under WCB Administrative Order 3-1973, on which the Board or Director issued a determination of eligibility prior to October 4, 1977, shall be processed and paid as provided for in that Administrative Order.

(3) Requests for second injury relief filed in accordance with rules adopted under WCD Administrative Order 2-1978, on which the Department issued a Wage Subsidy, Worksite Modification or Increased Cost Protection contract prior to January 1, 1982, shall be paid as provided in that Administrative Order.

(4) Employers with Increased Cost Protection contracts may also apply for relief in accordance with the provisions of the Handicapped Workers Reserve, OAR 436-40. If it appears that the total costs of the second injury will exceed the contractual limits of the Increased Cost Protection contract, the employer may seek Handicapped Workers Reserve benefits in order to reduce those costs to the \$20,000 limit payable in accordance with the contract.

(5) Workers' Reemployment Reserve contracts approved by the Department prior to March 16, 1987, in accordance with rules adopted under WCD Administrative Order 7-1981, shall be paid as provided in that Administrative Order.

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(6) The Director may waive provisions of these rules if the Director finds it necessary to carry out the provisions of ORS 656.622.

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Renumbered from OAR 436-63-005, 5/1/85
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436-110-005 DEFINITIONS

As used in these rules:

(1) "Administrative approval" means an approval or finding in a particular matter by the administrator of the Rehabilitation Review Division of the Workers' Compensation Department, or the administrator's delegate. "Prior administrative approval" means that such approval has been secured before any commitment is made to provide assistance governed by these rules.

(2) "Department" means the Oregon Workers' Compensation Department.

(3) "Director" means the Director of the Workers' Compensation Department.

(4) "Division" means the Rehabilitation Review Division of the Workers' Compensation Department.

(5) "Employer" means a subject complying employer within the meaning of the Workers' Compensation Law who meets the requirements of all other applicable state and federal regulations. "Employer-at-injury" means an employer in whose employ a worker was injured or suffered an aggravation which gave rise to the need for reemployment assistance.

(6) "Employment" used with certain modifiers has the following meanings:

(a) "Suitable employment" means permanent employment of the kind for which the worker has the necessary knowledge, skills and abilities, and providing a wage as close as possible to the wage currently being paid for employment which is the regular employment for the worker.

(A) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(B) "Skills" means mental and physical proficiency.

(C) "Abilities" means the mental and physical capability to apply the worker's knowledge and skills.

(b) "Permanent employment" means employment normally expected to last indefinitely subject to the employer's business practices and policies, collective bargaining agreement(s), applicable statutes and economic conditions.

(c) "Regular employment" means permanent employment of the kind the worker held at the time of the injury or the claim for aggravation, whichever gave rise to the need for reemployment assistance under these rules; or, held customarily at that time.

(d) "Modified employment" means regular employment which has been changed to

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accommodate the worker's limitations.

(e) "New employment" means permanent employment of a kind which differs from regular employment and modified employment.

(7) "Exceptional disability" means a disability equivalent to the complete loss, or loss of use, of two or more limbs.

(8) "Insurer" means the State Accident Insurance Fund Corporation, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer.

(9) "Reemployment" means the employment of a worker by the employer-at-injury in specially created or modified employment, or new employment.

(10) "Reemployment assistance" means any of the goods and services under these rules for assisting employers in the reemployment or hiring of injured workers.

(11) "Substantial obstacle" means a physical or mental impairment resulting from a disabling, compensable injury, which limits or prevents a worker from engaging in suitable permanent employment.

(12) "Vocational assistance" means any of the services, goods, allowances and temporary disability compensation under OAR 436-120 for assisting in the return to work of an injured worker.

(13) "Wages" mean the money rate at which the service rendered is recompensed under the contract of hiring, not including commission, tips, overtime, paid vacation, paid sick leave, other paid leave, board, housing, rent or other remuneration.

(14) "Wage subsidy" has the meaning given in OAR 436-110-009(2).

(15) "Worksite modification" has the meaning given in OAR 436-110-009(1).

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436-110-006 REHABILITATION REVIEW DIVISION

The Rehabilitation Review Division is charged with assuring that injured workers and employers receive reemployment assistance pursuant to ORS 656.622 and these rules; and, ensuring the propriety of the Department's reimbursement of reemployment assistance costs.

Hist: Filed 2/20/87 as WCD Admin Order 1-1987; eff. 3/16/87

436-110-009 KINDS OF REEMPLOYMENT ASSISTANCE

The kinds of reemployment assistance available are:

(1) Worksite modification. A worksite modification alters the configuration of a worksite, or involves purchasing, modifying or supplementing equipment to enable a worker to work within the limitations imposed by an injury. It is subject to the conditions set forth in OAR 436-

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110-035. It may include one or more of the following elements:

(a) Provision of tools, equipment, fixtures or furnishings; installation of equipment or machinery; or alteration of permanent structures beyond that which would customarily be provided by an employer to all employees and which would normally be a component of the worksite.

(b) Engineering, architectural, ergonomic and other professional consultative services to determine the feasibility of, or design worksite modifications.

(2) Wage subsidy. A wage subsidy reimburses an employer for a portion of the worker's wages for a specified period subject to the conditions set forth in OAR 436-110-035.

(3) Other reemployment assistance. The director may provide other reemployment assistance in order to carry out the provisions of ORS Chapter 656 and these rules.

Hist: Filed 2/20/87 as WCD Admin Order 1-1987, eff: 3/16/87

436-110-010 POLICY GOVERNING ASSISTANCE FROM THE WORKERS' REEMPLOYMENT RESERVE

(1) Assistance to employers from the Workers' Reemployment Reserve shall be provided in order to encourage employers to reemploy or hire workers who have a substantial obstacle to suitable employment.

(2) All employment for which reemployment assistance is granted shall be suitable employment.

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436-110-020 CRITERIA FOR GRANTING ASSISTANCE FROM THE WORKERS' REEMPLOYMENT RESERVE; ELIGIBILITY AND INELIGIBILITY OF WORKERS AND EMPLOYERS

An employer and worker are eligible for assistance from the Workers' Reemployment Reserve when the employer agrees to reemploy or hire the worker, and:

(1) As a result of the injury the worker has not successfully returned to suitable employment and will not be able to return to regular employment; and,

(2) The worker has a substantial obstacle to employment resulting from the injury, and there is:

(a) A preponderance of medical evidence which indicates the disability would appear to be permanent; or,

(b) The worker has a Determination Order, Order of a Referee, Order on Review by the Board, decision of the Court of Appeals or an approved stipulation which grants permanent disability.

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(3) A worker is not eligible for reemployment assistance if the worker has intentionally misrepresented a matter material to the provision of reemployment assistance.

(4) An employer is not eligible for reemployment assistance if:

(a) The employer intentionally misrepresents a claim for reimbursement or submits reimbursement claims prior to paying the costs.

(b) The employer fails to provide or maintain Oregon workers' compensation insurance.

(c) The employer has established a pattern of terminating workers within 60 days after completion of the agreement.

(d) The employer fails to abide by any other provision of a reemployment assistance agreement, or these rules.

(5) An employer failing to comply with these rules may be barred from receiving reemployment assistance for a period prescribed by the Director.

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436-110-035 REEMPLOYMENT ASSISTANCE—CONDITIONS; LIMITATIONS

(1) Wage subsidies shall be limited in duration to six months, and shall not exceed a monthly rate of 50 percent reimbursement of wages paid by the employer, other than for a worker with an exceptional disability. The determination of whether a disability is exceptional requires administrative approval. In no case shall reimbursement exceed 75 percent of the wages paid in any one month.

(2) Worksite modifications in excess of \$1,000 require prior administrative approval. Worksite modifications shall be limited in any one case to \$15,000, other than for a worker with an exceptional disability. Other conditions and procedures as set forth in OAR 436-110-090(4)(g) and (5) also apply.

(3) Employers hiring their relatives, patients, clients, corporate officers or their relatives, shareholders or other persons with whom they have a relationship other than a usual employer-employee relationship, are not eligible for reemployment assistance without prior administrative approval.

(4) Reemployment assistance agreements and supporting information shall be in the format prescribed by the Director.

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436-110-060 END OF AGREEMENTS OTHER THAN BY COMPLETION

(1) If a reemployment assistance agreement is prematurely ended by the employer for reasons beyond the worker's control, the worker may be eligible for further assistance from the Workers' Reemployment Reserve with prior administrative approval.

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(2) If wage subsidy is interrupted for reasonable cause, it may be extended for a period equal to the length of interruption.

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436-110-080 RESOLVING REEMPLOYMENT ASSISTANCE DISPUTES; APPEAL TO THE DIRECTOR

(1) If an employer, worker or insurer is aggrieved by a decision of the Division, the aggrieved party may request a review by the Director.

(2) Pursuant to ORS 656.622(2), the Director's decision shall be final and not subject to review by any court or other administrative body.

Hist: Filed 2/20/87 as WCD Admin Order 1-1987, eff. 3/16/87

436-110-090 FILING OF AGREEMENTS; REIMBURSEMENT OF REEMPLOYMENT ASSISTANCE COSTS

(1) A Workers' Reemployment Reserve agreement shall be filed with the Department within ten days after obtaining the signatures of the parties, accompanied by the supporting information.

(2) The employer shall notify the department in writing when a wage subsidy has been terminated prior to its originally scheduled completion date. Such notice shall be accompanied by the final wage reimbursement request.

(3) In the absence of the employer's or insurer's ability to pay, nothing in these rules precludes the department from advancing funds to enable the employer to perform a worksite modification. In no case shall the department directly purchase or otherwise assume responsibility for worksite modification. Prior administrative approval is required in all such instances.

(4) The following procedures and conditions apply to reimbursing or advancing funds for costs of reemployment assistance:

(a) Reimbursement or advancement of funds shall be made only for reemployment assistance provided in accordance with these rules. Reimbursement under these rules shall not be made for vocational assistance.

(b) Reimbursement or advancement of funds will be made only after the agreement has been filed and approved. Requests for reimbursement or the advancement of funds shall be made in the manner prescribed by the Director.

(c) The Department will reimburse or advance funds for costs of reemployment assistance, subject to the availability of funds.

(d) Reemployment assistance costs must be paid before reimbursement is requested.

(e) Reimbursed costs shall not be charged by the insurer to the employer as claim costs or

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by any other means. Whenever reimbursement is denied, the insurer shall not charge the costs of the reemployment assistance to the insured employer, worker or the new employer.

(f) Reimbursement requested before the employer has paid the costs is subject to denial or recovery by the Department. Insurers requesting reimbursement prior to paying the costs are subject to denial or recovery, in addition to any penalties under ORS chapter 656.

(g) Further procedures and conditions relating to reimbursement for worksite modification costs are as follows:

(A) If the cost for a single item is over \$1,000, three competitive quotes shall be obtained. If three quotes are not available, documentation of efforts to obtain three quotes shall be made (i.e., sole source). The lowest quote shall normally be selected.

(B) Multiple orders to circumvent the requirements of this section shall not be issued.

(5) If prior to the termination of a worksite modification agreement, the employer fails to meet any conditions prescribed for the care and protection of property in the employer's custody, and the property suffers damage or loss, the employer shall not be compensated for repair or replacement of the property.

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436-110-100 AUDITS

(1) Insurers are subject to periodic program and fiscal audits by the Department. 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 Department directly or from future reimbursements by way of offset. If the Department finds upon audit that procedures which led to disallowed reimbursements are still being used, the Department may withhold further reimbursements until corrections satisfactory to the Department are made.

(2) The insurer shall maintain case files, records, reports, receipts and canceled checks documenting reemployment assistance costs for which reimbursement has been requested by the insurer. These records shall be maintained in accordance with OAR 436-50 or for a period of three years after the last reimbursement request.

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

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