

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 REEMPLOYMENT ASSISTANCE PROGRAM

ADMINISTRATIVE ORDER NO. 97-051
 EFFECTIVE MARCH 17, 1997

OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
 WORKERS' COMPENSATION DIVISION
 OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 110

REEMPLOYMENT ASSISTANCE PROGRAM

TABLE OF CONTENTS

Rule	Page
436-110-0200 Assistance Available From The Reemployment Assistance Program.....	1
436-110-0280 Eligibility For Reemployment Assistance	7
436-110-0320 Preferred Worker Cards	10
436-110-0400 Procedure To Use The Preferred Worker Program.....	11

EXHIBIT "A"

OREGON ADMINISTRATIVE RULES
 CHAPTER 436, DIVISION 110

436-110-0200 Assistance Available From The Reemployment Assistance Program

(1) Assistance available from the program includes the Employer-at-Injury Program and the Preferred Worker Program.

(2) The Employer-at-Injury Program is an employer-option and employer-activated program. Its purpose is to encourage the early return to work of an injured worker before claim closure. The Employer-at-Injury Program may be used only once per worker per claim opening. The insurer at injury administers the program and requests reimbursement for program costs from the fund Reimbursement is limited to:

(a) "Worksite modification" which means altering a worksite by renting, purchasing, modifying or supplementing equipment, or changing the work process to enable a worker to work within the limitations imposed by the compensable injury which qualified the worker for the Employer-at-Injury Program. "Worksite" means a primary work area which is already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's or worker's premises, property and equipment used to conduct business under the employer's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. Maximum reimbursement is \$2,500.

(A) The form of modification shall be determined based solely on the obstacles to the worker performing the job due to the limitations caused by the compensable claim;

(B) Modifications must be provided for and used by the worker during the Employer-at-Injury Program;

(C) A modification shall be provided only to allow the worker to perform the job within

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

the limitations cited by the medical service provider.

(b) Wage subsidy as defined in section (6) of this rule, except wage subsidy benefits are restricted to the following conditions:

(A) A wage subsidy is limited to a maximum duration of three months and may not be interrupted or extended;

(B) A wage subsidy is limited to a monthly reimbursement rate of 50 percent; and,

(C) The wage must be either the wage at injury or the wage paid in the early-return-to-work position, whichever is lower.

(c) Employer-at-Injury Program Purchases include:

(A) Tuition, books and fees for a class or course of instruction to update existing skills or to meet the requirements of the job. Maximum reimbursement is \$750.

(B) Tools and equipment required for the job limited to items mandatory for employment. Purchases do not include items the employer normally provides, items the worker possesses or duplicate worksite modification items. Maximum reimbursement is \$1,000.

(C) Clothing required for the job, except clothing the employer normally provides and/or the worker already possesses. Maximum reimbursement is \$400.

(D) All Employer-at-Injury Program purchases, except clothing and worksite modifications unique to the worker as specified in paragraph (8)(k)(A) of this rule, become the employer's property upon the end of the program.

(3) The Preferred Worker Program is a worker-option and worker-activated program. Its purpose is to encourage the employment of the worker. The program consists of premium exemption, claim cost reimbursement, wage subsidy, obtained employment purchases and worksite modification. The worker may offer reemployment assistance to the employer. The employer receives the benefit of the reemployment assistance the worker and employer agree to use. Premium exemption may be used with multiple employers within the three-year period of eligibility. Except as otherwise provided in these rules, a Preferred Worker may use wage subsidy and each obtained employment purchase category twice, once with one employer and once with a different employer. Worksite modification assistance may be used twice by a Preferred Worker or an eligible worker with permanent disability as a result of an Oregon compensable injury. If, as a result of a new injury or an aggravation, a Preferred Worker meets the Preferred Worker Program eligibility criteria, a new Preferred Worker Identification Card will be issued as specified in OAR 436-110-0320.

(4) "Premium exemption" releases the employer from paying workers' compensation insurance premiums or premium assessments on the Preferred Worker during the time premium exemption is in effect, up to a maximum of three years from the date of first use by the worker during the Preferred Worker eligibility period. If the Preferred Worker has a new compensable injury or occupational disease, the employer does not have the claim costs included in its experience rating calculation. Premium exemption may not be extended. Premium exemption allows the following:

(a) While actively using premium exemption, the employer does not report, and the

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

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 436-085. The employer shall start paying insurance premiums and premium assessments when premium exemption ends.

(b) While premium exemption is active, the worker may provide a new eligible employer premium exemption for the remainder of the three-year premium exemption period.

(5) "Claim cost reimbursement" provides reimbursement to the insurer for claim costs when a Preferred Worker incurs a new compensable injury or occupational disease while employed under premium exemption. Specific limitations of requesting claim cost reimbursement include the following:

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

(b) Reimbursements include disability benefits, medical benefits, vocational costs (except self-employment), claim disposition agreements in accordance with ORS 656.236, disputed claim settlements in accordance with ORS 656.289, stipulations, as well as attorney fees awarded the worker or the worker's beneficiaries and administrative costs. The administrative cost factor to be applied to claim costs shall be developed in the manner specified in OAR 436-050-0180; and,

(c) The claim shall 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.

(6) "Wage Subsidy" provides an employer with partial reimbursement of a worker's gross wages for a specified period. "Wages" means the money rate paid a worker for services performed including paid leave accrued during the period of the wage subsidy, overtime, commission, and reasonable value of board, rent, housing, lodging and similar advantage received from the employer, as determined by the division in accordance with OAR 436-060. "Wages" do not include tips, bonuses, employee insurance or benefits programs, employee discounts or other forms of remuneration not included as part of the worker's gross wages. Wage subsidy benefits are restricted by the following conditions:

(a) A wage subsidy is limited to a duration of six months and a monthly reimbursement rate of 50 percent, except for a worker with an exceptional disability. For a worker with an exceptional disability, the wage subsidy duration is limited to one year and a monthly reimbursement rate of 75 percent. For the purpose of these rules, "exceptional disability" means a disability equivalent to the complete loss, or loss of use, of two or more limbs including, but not limited to, a serious head injury resulting in a significant loss of memory, cognitive ability or motor function or massive injuries where the loss of limbs has not occurred. The division shall determine whether a worker has an exceptional disability based upon the combined effects of all of the worker's Oregon compensable injuries awarding permanent disability.

(b) A wage subsidy may be interrupted for reasonable cause and extended to complete the wage subsidy on a whole workday basis. Reasonable cause includes, but is not limited to,

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

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.

(c) Wages subject to reimbursement must be within the prevailing wage range for that occupation. The prevailing wage range is determined by first examining the wages paid by the employer for other workers doing the same job. If no other workers are doing the same job, a labor market survey of the local labor market may be conducted. If the labor market survey does not support the wage rate requested, the division will determine the wage subject to reimbursement.

(d) Wages subject to reimbursement must be unsubsidized by any other source.

(7) "Obtained Employment Purchases" are those items an employer requires of all workers performing the job for which the worker is employed or which are required for the worker to accept a job or continue employment. These purchases may be provided for a job outside the state of Oregon. All purchases become the worker's property upon employment in the job for which they are required. Conditions for the use of obtained employment purchases are as follows:

(a) For items as specified in paragraphs (c)(A), (B), (C), (F), (G) and (H) of this section, the employer must submit a signed list of item(s) verifying the item(s) are required of all workers performing the job for which the worker is employed. If no other workers are performing the same job, the division may conduct a local labor market survey to determine the items employers require to perform the job. If the labor market survey does not support the obtained employment purchase item(s) requested, the division will determine the appropriate obtained employment purchase item(s);

(b) When an obtained employment purchase item has been provided, a duplicate of that item will not be provided unless the item was stolen or destroyed by nature or an act of God; or, in the case of clothing for new employment, the clothing is no longer usable. The loss must be uninsured and a police report may be required by the division to verify the loss;

(c) Obtained employment purchases are limited to:

(A) Tuition, books and fees for a class or course of instruction to update existing skills or to meet the requirements of an obtained job. Maximum reimbursement is \$750.

(B) Tools and equipment limited to those items which are mandatory for initial employment, such as starter sets. Purchases shall not include items the employer normally provides, items the worker possesses or duplicate worksite modification items. Maximum reimbursement is \$2,000.

(C) Clothing required for the job, not including clothing the employer normally provides and/or the worker already possesses. Clothing does not include accessories such as jewelry, scarves, wallets, purses or other items which are not basic clothing. Maximum reimbursement is \$400.

(D) Moving expenses for a job more than 50 miles from the worker's primary residence. Moving expenses may be provided to move within 50 miles of the worker's primary residence or

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

within the distance the worker commuted for work at claim opening, when the worker's permanent disability from the injury precludes the worker from commuting the required distance. A signed statement from the worker's medical service provider, as defined in OAR 436-010, shall be submitted to the division as evidence of the worker's inability to commute the required distance. Reimbursement is limited to the cost of moving household goods weighing not more than 10,000 pounds and reasonable costs of meals and lodging for the worker and the worker's family. The cost of meals, lodging, public transportation and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon Department of Consumer and Business Services classified employees covered under the collective bargaining agreement. The worker and the worker's spouse may receive per diem for meals and lodging. The worker's dependents may receive per diem for meals. Lodging and meals are limited to a maximum period of two weeks. Reimbursement of moving expenses and mileage for one vehicle is limited to a single one-way trip.

(E) Rental allowance for the worker's primary residence limited to first month's rent and last month's rent when required as specified in the rental agreement and non-refundable security and utility fees, except deposits or fees for pets, telephone or television, when the worker is required to move outside commuting distance to accept a job as specified in paragraph (D) of this section.

(F) Temporary lodging, meals and mileage to attend a class or course of instruction when overnight travel is required. The cost of meals, lodging, public transportation and use of a personal vehicle shall be reimbursed at the rate of reimbursement for State of Oregon Department of Consumer and Business Services classified employees covered under the collective bargaining agreement. Lodging, meals and mileage are limited to a combined period of one month, and the total maximum reimbursement is \$2,500.

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

(H) Occupational certification, licenses and related testing costs, or membership fees required for the job. Maximum reimbursement is \$500.

(d) When the division determines the appropriate obtained employment purchase and the worker requests an obtained employment purchase equally appropriate but with a greater cost, upon division approval, funds equal to the obtained employment purchase identified by the division may be applied toward the cost of the obtained employment purchase desired by the worker.

(8) "Worksite modification" means altering a worksite 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" means a primary work area which is already constructed and available for a worker to use to perform the required job duties. The worksite may be the employer's or worker's premises, property and equipment used to conduct business under the employer's direction and control. A worksite may include a worker's personal property or vehicle if required to perform the job. Requirements for the use of worksite modification assistance are as follows:

(a) The form of modification will be determined based on the worker's limitations

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

resulting from Oregon compensable injuries or occupational diseases. The division shall make the final determination of what is needed to modify the job. The division must approve, by authorized signature, a completed and signed Worksite Modification Agreement, filed by the worker and employer as specified in OAR 436-110-0400(6)(f), prior to any reimbursement or authorization for expenditure;

(b) Modifications required because of limitations resulting from a compensable injury may be provided up to three years from the date the worker returns to regular employment or other employment started while the worker is eligible for the Preferred Worker Program;

(c) Modifications will only be provided to allow the worker to perform the job duties within the worker's mental and physical capabilities;

(d) Modifications may be provided to allow a worker to return to regular employment;

(e) 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 subsection (6)(a) of this rule;

(f) Modifications over \$2,500 require division approval;

(g) Modifications limited to a maximum of \$2,500 may be provided for on-the-job training under OAR 436-120, except when the employer at injury is the trainer. When the employer at injury is the trainer, a modification of up to \$25,000 may be provided. A modification will not be approved for any other type of training;

(h) Modifications must be practical and feasible as determined by the division;

(i) 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;

(j) A modification may include tools, equipment, fixtures or furnishings not customarily provided by an employer. It may include installation of equipment or machinery, or alteration of permanent structures. It may include rental of tools, equipment, fixtures or furnishings to determine the feasibility of a modification. It may include consultative services consisting of engineering, architectural, ergonomic and similar services required to determine the feasibility, recommend, design or to perform a worksite modification. 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;

(k) Modification equipment shall become the employer's property upon successful completion of a Worksite Modification Agreement and employment of the worker, except when specified by the division. The division shall determine ownership of worksite modification equipment prior to approving an agreement. Exceptions to the modification becoming the employer's property include, but are not limited to:

(A) An item unique to the worker, such as a custom-designed tool to adapt the worker's prosthesis to a job-related task;

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

(B) An item that is mobile, portable, easily transferable, not affixed or attached to the employer's property or equipment, not integral to the employer's operations, and of greater value to the worker in order to maintain employment; and,

(C) Items installed in the worker's personal property or premises.

(l) The division may request a physical capacities evaluation or **review of a job analysis** [after claim closure] to quantify the worker's injury-caused permanent limitations [or review of a job analysis to support a worksite modification]. Reimbursement for each physical capacities evaluation and each job analysis review shall be in accordance with the Oregon Medical Fee and Relative Value Schedule as specified in OAR 436-010. The cost of a physical capacities evaluation or review of a job analysis does not apply toward the total cost of a worksite modification;

(m) If, prior to the end of a Worksite Modification Agreement, the modification is damaged, in need of repair or lost, the employer or worker must repair or replace the modification without repayment from the division;

(n) The employer or worker shall not dispose of the modification while the worker is employed or prior to the end of the agreement without division approval. Failure to repair or replace the modification, or early disposal of the modification may result in the end of eligibility for reemployment assistance;

(o) All worksite modification assistance is subject to the Worksite Modification Agreement provisions established by the director.

Stat. Auth.: ORS 656.236, ORS 656.289, ORS 656.307, ORS 656.622, ORS 656.726(3)
 Stats. Implemented: ORS 656.236(6), ORS 656.289(5), ORS 656.307(2), ORS 656.622(1), (2), (3), (5), (10), ORS 656.726(3)
 Hist: Filed 1/2/73 as WCD Admin. Order 1-1973, eff. 1/15/73
 Amended 3/14/73 by WCD Admin. Order 3-1973, eff. 4/1/73
 Amended 9/29/77 as WCD Admin. Order 2-1977 (Temp.), eff. 10/4/77
 Amended 2/1/78 as WCD Admin. Order 2-1978, eff. 2/1/78
 Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82
 Renumbered from OAR 436-63-015, 5/1/85
 Amended 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
 Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
 Amended 6/21/90 as WCD Admin. Order 13-1990 (Temp.), eff. 7/1/90
 Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
 Renumbered from OAR 436-110-010, 020, 025, 041, 042, and 045, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93
 Amended 10/11/95 as WCD Admin. Order 95-062 (Temp.), eff. 10/11/95
 Amended 12/7/95 as WCD Admin. Order 95-068 (Temp.), eff. 1/1/96
 Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96
Amended 3/13/97 as WCD Admin. Order 97-051 (Temp.), eff. 3/17/97

436-110-0280 Eligibility For Reemployment Assistance

(1) The general eligibility provisions and Employer-at-Injury Program eligibility provisions or Preferred Worker Program eligibility provisions must be fulfilled to receive reemployment assistance, except for worksite modification assistance as specified in subsection (3)(b) of this rule.

(2) The general eligibility provisions for an employer are:

(a) The employer has and maintains Oregon workers' compensation insurance coverage; and,

(b) The employer complies with the Oregon Workers' Compensation Law.

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

(3) The general eligibility provisions for a worker are:

(a) The worker has an accepted Oregon compensable injury or occupational disease; and,

(b) The worker has not returned to, and (except for the Employer-at-injury Program) medical evidence indicates the worker will not be able to return to, regular employment under the most recent disabling claim opening. Exceptions are a worker who is able to return to regular employment with substantial worksite modification may be eligible for the Preferred Worker Program as specified in subsection (6)(c) of this rule, or worksite modification assistance may be provided a worker who is not otherwise eligible for the Preferred Worker Program to allow the worker to return to regular employment.

(4) Reemployment assistance may be provided when the worker was self-employed at the time of initial injury in order to return to the same self-employment venture as at the time of initial injury or to employment other than a self-employment venture.

(5) The additional specific eligibility provisions for the Employer-at-Injury Program are:

(a) The employer is the employer at injury;

(b) The employer is reemploying an eligible worker as part of the employer's early return-to-work program while the worker's claim is open; and,

(c) The worker is released for employment with restrictions which prevent the worker from performing full duty regular employment.

(6) The additional specific eligibility provisions for the Preferred Worker Program are:

(a) The worker has permanent disability as a result of an accepted Oregon disabling injury or occupational disease by one of the following:

(A) Permanent disability awarded by a Notice of Closure, a Determination Order, Order on Reconsideration, Order of a Referee, Order on Review by the Board, a decision of the Court of Appeals or an approved stipulation; or,

[(B) An open claim and the worker has available, immediate employment and documented medical evidence indicates permanent disability will likely be awarded at the time of claim closure; or,]

(B)[(C)] A claim closed by a Board's Own Motion or the insurer's own motion and medical documentation indicates permanent disability exists as a result of the injury or disease; or,

(C)[(D)] A claim settled by a Claim Disposition Agreement according to ORS 656.236 and medical documentation indicates permanent disability exists as a result of the injury or disease; **or,**

(D) 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.

(b) The worker has not refused an offer of appropriate employment with the employer at injury. For the purpose of this rule, "appropriate employment" means employment for which the worker has the knowledge, skills, abilities and physical capacity to perform the job. A job offer requiring the use of reemployment assistance by the worker is not considered an offer of appropriate employment; or,

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

(c) The worker is returning to regular employment with substantial worksite modification. The division shall determine a substantial worksite modification based upon the worker's permanent limitations from compensable Oregon injuries, in relation to the required job duties and the extent of the modifications necessary to accommodate the worker's limitations resulting from the injuries. When a substantial modification has been performed, the worker will be determined eligible for the Preferred Worker Program. The worker will be issued a Preferred Worker Identification Card after the modifications are in place and after the division determines the modification is substantial.

(7) Reasons for ending reemployment assistance eligibility are:

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

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

(c) Falsification or alteration of a preferred worker card or a Reemployment Assistance Agreement;

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

(e) The worker releases all claim rights through a Disputed Claim Settlement in accordance with ORS 656.289;

[(f) The claim upon which eligibility was determined receives no award for permanent disability, except for a Claim Disposition Agreement in accordance with ORS 656.236, and the worker does not have a previous claim with an award for permanent disability. However, reemployment assistance costs approved prior to claim closure with no award for permanent disability may be reimbursed, and compensable injuries occurring prior to claim closure during a period of premium exemption may qualify for claim cost reimbursement for the life of the claim, except as cited in OAR 436-110-0450;]

(f)[(g)] The worker returns to regular employment without substantial worksite modification and a documented demand from the Department has been made for the return of the preferred worker card from the worker;

(g)[(h)] The claim upon which eligibility was determined is subsequently denied in accordance with ORS 656.262. However, reemployment assistance costs approved prior to the denial may be reimbursed, and compensable injuries occurring prior to the denial during a period of premium exemption may qualify for claim cost reimbursement for the life of the claim, except as cited in OAR 436-110-0450;

(h)[(i)] The worker or employer is sanctioned from receiving reemployment assistance in accordance with OAR 436-110-0500;

(i)[(j)] The worker or employer fails to repair or replace a damaged or lost worksite modification as specified in OAR 436-110-0200(8)(m);

(j)[(k)] The employer does not maintain Oregon workers' compensation insurance coverage; or,

(k)[(l)] Alteration of an Authorization for Expenditure or misuse of funds to purchase items not specifically authorized during the period of an active reemployment assistance agreement including, but not limited to, the sale or return of items for cash, credit or exchange, without written division approval. The worker or employer may be required to repay all or part

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

of the funds as determined by the division.

(8) Reasons to reinstate reemployment assistance eligibility are:

(a) Reemployment assistance was prematurely ended for reasons beyond the worker's control. Examples of reasons beyond a worker's control may include, but are not limited to, breach, default or omission on the part of the employer; or the worker returned to work and the job ended prior to claim closure; or,

(b) Eligibility was ended in error; or,

(c) The employer has reinstated or obtained new workers' compensation insurance coverage.

Stat. Auth.: ORS 656.622, ORS 656.726(3)
 Stats. Implemented: ORS 656.622(9), ORS 656.726(3)
 Hist: Filed 1/2/73 as WCD Admin. Order 1-1973, eff. 1/15/73
 Amended 3/14/73 by WCD Admin. Order 3-1973, eff. 4/1/73
 Amended 9/29/77 as WCD Admin. Order 2-1977 (Temp.), eff. 10/4/77
 Amended 2/1/78 as WCD Admin. Order 2-1978, eff. 2/1/78
 Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82
 Renumbered from OAR 436-63-020, 5/1/85
 Amended 2/20/87 as WCD Admin. Order 1-1987, eff. 3/16/87
 Amended 12/17/87 as WCD Admin. Order 12-1987, eff. 1/1/88
 Amended 6/21/90 as WCD Admin. Order 13-1990 (Temp.), eff. 7/1/90
 Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90
 Renumbered from OAR 436-110-020, 1/21/93,
 WCD Admin. Order 93-050, eff. 3/1/93
 Amended 12/7/95 as WCD Admin. Order 95-068 (Temp.), eff. 1/1/96
 Amended 3/13/96 as WCD Admin. Order 96-056 eff. 4/5/96
Amended 3/13/97 as WCD Admin. Order 97-051 (Temp.), eff. 3/17/97

436-110-0320 Preferred Worker Cards

(1) The division may issue two types of preferred worker cards to eligible workers. The cards identify the worker as being eligible to offer an employer Preferred Worker Program assistance to employ the worker. The first card issued is a Preferred Worker Identification Card. The worker and employer use this card to start premium exemption by completing the card and returning it to the division. When premium exemption is started, a Preferred Worker Eligibility Card is issued to the worker. This card shows the three-year premium exemption period. Limitations on using the preferred worker cards include:

(a) A worker can have only one valid preferred worker card at a time;

(b) A Preferred Worker subsequently determined eligible for the program under another claim or claim opening shall discontinue use of a previously issued card when a new card is issued;

(c) A preferred worker card expires three years from the date of issue. The three-year period cannot be interrupted or extended. A new card will not be issued without a subsequent qualifying claim opening; and,

(d) A preferred worker card may be reissued upon loss of the original card during and for the three-year period the original card was issued.

(2) A Preferred Worker Identification Card may be requested as follows:

(a) At the time of insurer submission of return-to-work information as specified in OAR

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

436-110-0240(4);

(b) Prior to claim closure when the worker has available, immediate employment and meets the eligibility criteria specified in OAR 436-110-0280(6)[(a)(B)]. Workers or their representatives may contact the division directly to request an eligibility determination and a preferred worker card. Upon determining eligibility, the Division will issue a Preferred Worker Identification Card to the worker. If the worker is determined to be ineligible, the Division will issue written notification explaining why the worker is not eligible; and,

(c) Upon claim closure by a Claim Disposition Agreement, a Board's Own Motion or insurer's own motion, the worker or their representative may contact the division directly.

(3) The division may cancel and withdraw a preferred worker card if:

(a) The preferred worker card was issued in error; or,

(b) Any reason for ending reemployment assistance eligibility as specified in OAR 436-110-0280(7) applies.

(4) The division will notify the worker of the cancellation of a preferred worker card. The worker must surrender the card upon written demand by the division. Failure to surrender the card upon demand may result in sanctions against the worker as specified in OAR 436-110-0500.

Stat. Auth.: ORS 656.622, ORS 656.726(3)

Stats. Implemented: ORS 656.622(9), ORS 656.726(3)

Hist: Filed 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

Renumbered from OAR 436-110-022, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93

Amended 3/13/96 as WCD Admin. Order 96-056, eff. 4/5/96

Amended 3/13/97 as WCD Admin. Order 97-051 (Temp.), eff. 3/17/97

436-110-0400 Procedure To Use The Preferred Worker Program

(1) The following procedures are to be used to access the Preferred Worker Program.

(2) Premium exemption must be activated in order to use claim cost reimbursement, wage subsidy and obtained employment purchases for employment in Oregon.

(a) Premium exemption is activated as follows:

(A) When a worker issued a Preferred Worker Identification Card accepts employment with premium exemption requested, the worker and employer shall complete the Preferred Worker Identification Card. The card must be signed and dated by the worker and employer and mailed to the division within 90 days of the date the worker starts work. Upon division approval, premium exemption will begin the date the worker started work. If the division does not approve premium exemption, the division will issue written notification explaining why premium exemption cannot be approved; or,

(B) When a potentially eligible worker without a Preferred Worker Identification Card accepts employment with premium exemption requested, the worker shall submit a written request to the division, or call the division, within 90 days of the date the worker starts work. Upon the division determining eligibility as specified in OAR 436-110-0280, premium exemption will begin the date the worker started work. If the worker is not eligible or premium exemption cannot be approved, the division will issue written notification explaining why the worker is not eligible or why premium exemption cannot be approved; or,

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

(C) When a worker with an open claim accepts employment and a Preferred Worker Identification Card is subsequently issued, the card must be signed and dated by the worker and employer and mailed to the division within 90 days of the date the card was issued. Upon division approval, premium exemption will begin either the date the card was issued or the date employment began, whichever is later. If the division does not approve premium exemption, the division will issue written notification explaining why premium exemption cannot be approved.

(b) Upon approval of premium exemption, the division will issue the worker a Preferred Worker Eligibility Card which shows the premium exemption start and end dates. The division will also issue a Notice of Premium Exemption to the employer, the employer's insurer and the insurer of the employer at injury;

(c) A Preferred Worker Eligibility Card may be used by the worker to obtain new employment and to provide subsequent employers with premium exemption for the remainder of the three-year premium exemption period;

(d) Employers who subsequently employ a Preferred Worker shall copy the Preferred Worker Eligibility Card as evidence of premium exemption, send one copy to their insurer as notice that a Preferred Worker is employed using premium exemption, and keep one copy on file. The card shall be returned to the worker; and,

(e) If a Preferred Worker incurs a compensable injury or occupational disease during the premium exemption period, the employer shall notify its insurer of the injury and write "Preferred Worker" in the left-hand margin of Form 801, and provide a copy of the worker's Preferred Worker Eligibility Card. If the employer fails to write "Preferred Worker" on Form 801, or fails to send a copy of the Preferred Worker Eligibility Card, the employer shall notify the insurer as soon as possible that the injury or disease was incurred by a Preferred Worker. When this occurs, 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.

(3) Claim cost reimbursement may be provided to an insurer when a Preferred Worker employed with an employer receiving premium exemption incurs a new compensable injury or occupational disease.

(a) The insurer shall request claim cost reimbursement as follows:

(A) All requests for reimbursement shall be made within one year of payment;

(B) Quarterly reimbursement requests must be in the format the director prescribes by bulletin. Reimbursement documentation shall include, but is not limited to:

(i) 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;

(ii) Payment certification statement; and,

(iii) Any other information deemed necessary by the division.

(b) Request for reimbursement shall not include:

(A) Claim costs for any injury which did not occur while the worker was employed with

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

premium exemption;

(B) Costs incurred for conditions completely unrelated to the compensable claim except for diagnostic tests, including independent medical examinations, to determine compensability of the condition;

(C) Costs incurred due to inaccurate, untimely, or improper processing of the claim and those procedures outside generally accepted claims management processes;

(D) Penalties, fines or filing fees;

(E) Disposition amounts in accordance with ORS 656.236 and ORS 656.289, not previously approved by the division;

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

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

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

(A) Reimbursement has been made for any of the items specified in subsection (b) of this section;

(B) If claim acceptance as a new injury rather than an aggravation is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claim management procedures;

(C) The separate payments of compensation have not been documented, as required under generally accepted accounting procedures;

(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; and,

(F) The insurer failed to follow generally accepted claim management processes, procedures and practices.

(d) If the conditions described in paragraphs (c)(C), (D) and (E) of this section 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;

(e) If a claim is denied, the insurer shall receive reimbursement for claim costs, as determined by the division, according to these rules; and,

(f) 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

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

reimbursement:

(A) The insurer must obtain prior written approval of the disposition from the division. The proposed disposition shall be submitted to the division prior to submitting the disposition to the Workers' Compensation Board for approval;

(B) A request for approval of the proposed disposition shall include:

(i) A copy of the proposed disposition which specifies the proposed assistance from the fund and contains a signature line for division approval;

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

(iii) Other information as required by the division.

(C) 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.

(4) A wage subsidy may be requested by a worker and employer and the employer reimbursed as follows:

(a) A Wage Subsidy Agreement must be completed and signed by the worker and employer and submitted to the division. The agreement must be mailed to the division within 90 days of the date the worker starts work, except as specified in paragraph (2)(a)(C) of this section. Upon division approval, the wage subsidy will begin either the date the worker started work, or the date premium exemption is approved as provided in subsection (2)(a) of this rule. If the wage subsidy is not approved, the division will issue written notification explaining why the wage subsidy was not approved;

(b) Upon approval of the wage subsidy, the division will send a copy of the agreement to the worker and a copy of the agreement with a Wage Subsidy Reimbursement Request form to the employer;

(c) The employer may request reimbursement based on the wage agreed to on the Wage Subsidy Agreement or the wage paid the worker, whichever is less. Wages subject to reimbursement must have been paid the worker. Reimbursement shall be on a whole workday basis. An employer may request reimbursement, interruption or extension of a wage subsidy for a part of a day the worker worked; the part of the day reimbursed or interrupted will be counted as a whole workday toward the total duration of the wage subsidy; and,

(d) Requests for reimbursement shall be made no more frequently than once every two weeks. A Wage Subsidy Reimbursement Request must include a copy of the worker's payroll records. The payroll record shall state the dates (daily or weekly), hours, wage rate and the worker's gross wage. Payroll records may be a copy of the ledger or an itemized statement with the required information signed by the employer. Payroll records must be compiled in accordance with generally accepted accounting procedures.

(5) Obtained employment purchases may be requested by a Preferred Worker not receiving vocational assistance under OAR 436-120, as follows:

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

(a) The worker or insurer shall call or write the division directly for assistance in receiving obtained employment purchases;

(b) The Obtained Employment Purchase Agreement must be completed and signed by the worker and employer and submitted to the division. The agreement must be received by the division with a signed statement from the employer as specified in OAR 436-110-0200(7)(a), an itemized list of items to be purchased, or that were purchased, the quantity, unit cost, total cost, and the vendor name(s) and address(es). The worker must also indicate whether reimbursement will be requested or a means of expenditure from the fund is desired;

(c) Upon division approval, a copy of the agreement will be sent to the worker with either an Obtained Employment Purchase(s) Reimbursement Request form, a completed Authorization for Expenditure as defined in subsection (7)(b) of this rule or another means of expenditure from the fund. If the obtained employment purchase is not approved, the division will issue written notification explaining why the obtained employment purchase was not approved;

(d) A worker, employer, vocational assistance provider or insurer shall request reimbursement by submitting to the division a completed Obtained Employment Purchase(s) Reimbursement Request form with an invoice or receipt indicating "paid" for the item(s) purchased. Reimbursement will be made for only those items and costs approved and paid;

(e) An Authorization for Expenditure or another means of expenditure from the fund may be issued to the worker and vendor jointly for obtained employment purchases as specified in OAR 436-110-0200(7), except for the cost of meals and lodging required in association with a worker moving or attending a class or a course of instruction;

(f) A check may be issued to the worker for reasonable costs of meals, mileage and lodging due to moving, or to attend a class or course of instruction as allowed in OAR 436-110-0200(7)(c)(D) and (F) when overnight travel is required. A receipt for commercial lodging is required verifying funds were expended as agreed for all purchases. Failure to provide complete and accurate receipts may disqualify the party to whom funds were advanced from receiving a future advancement of funds or further reimbursement under the claim for which services were provided until the receipts are received. The department may also order the party to repay funds advanced including the Department's costs to recover funds.

(6) A worksite modification may be requested by a worker and costs reimbursed as follows:

(a) The worker may contact the division directly for worksite modification assistance. The worker, employer, insurer or insurer representative may perform a worksite modification with a cost of \$2,500 or less without division involvement. However, a completed and signed Worksite Modification Agreement must be approved by the division to be effective. A worksite modification with a cost of over \$2,500 requires division approval and involvement as specified in OAR 436-110-0200(8)(f);

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

(c) When the cost of the modification is \$2,500 or less, a Worksite Modification

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

Agreement limited to \$2,500 must be completed and signed by the worker and employer. The agreement must be sent to the division with the support information requested by the division. For workers with a preferred worker card, the support information specified in paragraphs (e)(C) and (F) through (M) of this section may be requested. For workers without a preferred worker card, the support information specified in paragraphs (e)(D) through (M) of this section may be requested;

(d) When the cost of the modification is over \$2,500, the information required in paragraphs (e)(A) through (M) of this section may be requested by the division. The requested support information must be received by the Division. If the proposed modification is appropriate, a Worksite Modification Agreement will be issued by the Division for the worker's and employer's signatures;

(e) Worksite modification support includes the following:

(A) The employer's legal name, "doing business as" (DBA) name, address, telephone number, Workers' Compensation Division (WCD) Employer Registration number, workers' compensation insurer, and Federal Tax Identification number;

(B) The worker's name, address, telephone number, WCD file number, insurer claim number, date of injury, and social security number;

(C) Whether the employment is with the employer-at-injury or a new employer, regular or new employment, the job title, Dictionary of Occupational Titles (DOT) code and wage;

(D) The eligibility criteria cited in OAR 436-110-0280(3) and (6) for those workers without a preferred worker card;

(E) Whether the worker has an exceptional disability as defined in OAR 436-110-0200(6)(a);

(F) Information indicating the worker possesses the basic knowledge, skills and abilities for the position;

(G) A permanent physical capacities and limitations statement;

(H) A job analysis which includes the duties and physical demands of the job before and after modification and the worker's limitations to performing the unmodified job. The worker, employer or Department may require the job analysis be approved by the attending physician before the modification is performed;

(I) Any consultative report relating to the modification, if applicable;

(J) An explanation of how the proposed modification will overcome the worker's limitations;

(K) Identification of whether the modification is to be purchased by the employer, worker or insurer and reimbursed by the department, or purchased through an Authorization for Expenditure or another means of expenditure from the fund approved by the director;

(L) Proof of the worker's ownership, insurance coverage and valid drivers license when the worker's personal vehicle is being modified; and,

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

(M) An itemized list of the things to be constructed or altered; materials, tools, equipment, fixtures, furnishings, shipping and any other purchases. The list shall include make, model and serial number of the items to be purchased or modified and related rates and costs of labor, material, shipping and any other item or service.

(f) A Worksite Modification Agreement must be completed and signed by the worker and employer and received by the division. Upon division approval by authorized signature, copies of the agreement will be sent to the employer, worker and insurer. The party purchasing the modification item will be sent either a Worksite Modification Reimbursement Request form, an Authorization for Expenditure or another means of expenditure from the fund approved by the director. If the worksite modification is not approved, the division will issue written notification explaining why the worksite modification was not approved;

(g) The worker, employer or insurer shall request reimbursement by submitting to the division a completed Worksite Modification Reimbursement Request form with an invoice or receipt indicating "paid" for the items purchased. Reimbursement will be made for only those items and costs approved and paid; and,

(h) The division may issue an Authorization for Expenditure or another means of expenditure from the fund approved by the director to the employer and vendor jointly for worksite modification property assigned to the employer. The division may issue an Authorization for Expenditure or another means of expenditure from the fund approved by the director to the worker and vendor jointly for worksite modification property assigned to the worker.

(7) Reemployment assistance costs may be reimbursed, an Authorization for Expenditure may be issued or another means of expenditure from the fund approved by the director may be allowed under the following conditions:

(a) The Department shall not purchase directly or otherwise assume responsibility for worksite modifications or obtained employment purchases;

(b) An Authorization for Expenditure becomes effective only when signed by the division. An "Authorization for Expenditure" is a voucher form issued by the division which authorizes an employer or worker to purchase specific reemployment assistance items or services from the fund;

(c) Reimbursement of costs, an Authorization for Expenditure or another means of expenditure from the fund approved by the director shall be made only for reemployment assistance provided in accordance with these rules. Reimbursement under these rules shall not be made for vocational assistance under OAR 436-120;

(d) Reimbursed costs shall not be charged by the insurer to the employer as claim costs or by any other means. Whenever reimbursement is denied, the insurer shall not charge the costs of the assistance to the worker or employer, except when agreed to between the employer and insurer, on an individual case basis, prior to the provision of assistance;

(e) If the cost for a single item, except for a chair, is over \$2,500, or the cost for items purchased from a single vendor is over \$2,500, three competitive quotes shall be obtained. If a chair costs over \$1,000, three competitive quotes shall be obtained. If three quotes are not

**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
REEMPLOYMENT ASSISTANCE PROGRAM**

available, documentation of efforts to obtain three quotes shall be provided. The lowest quote shall normally be selected. However, other criteria may be considered including, but not limited to, past vendor performance, delivery time and vendor availability to service or maintain the item; and,

(f) All requests for reimbursement shall be made within one year of the agreement termination date.

(8) [Once the division determines a worker's eligibility for the Preferred Worker Program and] **If there is an active Reemployment Assistance Program Agreement, the division will not end Preferred Worker Program eligibility until termination of the agreement if a Disputed Claim Settlement pursuant to ORS 656.289 does away with that portion of the claim from which eligibility arose or** [if] the claim is subsequently [closed without an award for permanent disability, through approval of a Disputed Claim Settlement pursuant to ORS 656.289, or a denial] **denied** pursuant to ORS 656.260[, until termination of the agreement]. Premium exemption ends either at the expiration date shown on the card or when the job ends, whichever occurs first. When this occurs, the division will issue written notification to the worker. The worker must notify all affected parties. If the job ends before the expiration date shown on the card, the preferred worker card must be surrendered to the division.

Stat. Auth.: ORS 656.236, ORS 656.289, ORS 656.307, ORS 656.622, ORS 656.726(3)

Stats. Implemented: ORS 656.236(6), ORS 656.289(5), ORS 656.307(2), ORS 656.622(1), (2), (3), (4), (5), (10), ORS 656.726(3)

Hist: Filed 1/2/73 as WCD Admin. Order 1-1973, eff. 1/15/73

Amended 3/14/73 by WCD Admin. Order 3-1973, eff. 4/1/73

Amended 9/29/77 as WCD Admin. Order 2-1977 (Temp.), eff. 10/4/77

Amended 2/1/78 as WCD Admin. Order 2-1978, eff. 2/1/78

Amended 12/30/81 as WCD Admin. Order 7-1981, eff. 1/1/82

Renumbered from OAR 436-63-045, 5/1/85

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

Amended 12/10/90 as WCD Admin. Order 30-1990, eff. 12/26/90

Renumbered from OAR 436-110-025, 031, 032, 035, 037, 041, 045, 047, 051, 052 and 060, 1/21/93, WCD Admin. Order 93-050, eff. 3/1/93

Amended 3/13/96 as WCD Admin. Order 96-056, eff. 4/5/96

Amended 3/13/97 as WCD Admin. Order 97-051 (Temp.), eff. 3/17/97