

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on Oct. 3, 2012 by the
Date prior to or same as filing date
Dept. of Consumer and Business Services, Workers' Compensation Division 436

Agency and Division Administrative Rules Chapter Number

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to become effective Nov. 1, 2012 Rulemaking Notice was published in the Aug. 2012 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Workers' compensation rules governing Employer-at-Injury Program, Preferred Worker Program, and vocational assistance
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

AMEND: OAR:

436-105-0003	436-105-0540	436-110-0347	436-120-0007	436-120-0165	436-120-0710
436-105-0500	436-110-0003	436-120-0001	436-120-0012	436-120-0175	
436-105-0510	436-110-0005	436-120-0002	436-120-0016	436-120-0340	
436-105-0511	436-110-0240	436-120-0003	436-120-0017	436-120-0443	
436-105-0512	436-110-0325	436-120-0005	436-120-0115	436-120-0445	
436-105-0520	436-110-0336	436-120-0006	436-120-0145	436-120-0510	

AMEND AND RENUMBER: From OAR 436-120-0447 to 436-120-0448
From OAR 436-120-0447 to 436-120-0449
From OAR 436-120-0447 to 436-120-0451

FILED
OCT 03 2012
ARCHIVES DIVISION
SECRETARY OF STATE

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

Other Auth.:

Stats. Implemented: ORS 656.340, 656.622

RULE SUMMARY

Revised OAR chapter 436, division 105, "Employer-at-Injury Program" rules:

- Specify that a new employer-at-injury program may not be used for a non-disabling claim that does not become disabling within two years from the date of injury.
- Combine the (previous) \$2,500 maximum reimbursement amounts for worksite modification and purchases of tools and equipment to provide a maximum combined reimbursement of \$5,000.
- Provide that all modifications and purchases made by the employer in good faith are reimbursable.

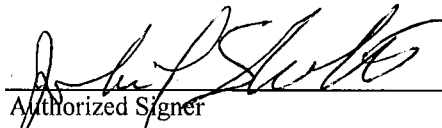
Revised OAR chapter 436, division 110, "Preferred Worker Program," rules:

- Clarify that if an employer changes its name or ownership status during a premium exemption period, the employer is not eligible for an additional three years of premium exemption.
- Clarify that if an employer changes the job duties of a preferred worker during the premium exemption period, the employer is not eligible for an additional three years of premium exemption.
- Provide that if the employer accommodates the worker's injury-caused restrictions while waiting for a worksite modification to be completed, the employer may elect to start wage subsidy immediately.

WCD 5-2012

Revised OAR chapter 436, division 120, "Vocational Assistance to Injured Workers," rules:

- Define "training."
- Require use of the cost-of-living matrix to calculate a worker's adjusted weekly wage if the worker's regular employment was the employment the worker held at the time of aggravation.
- Limit the types of worker notices that must also be sent to the Workers' Compensation Division.
- List statutory criteria for when the insurer is required to complete an eligibility evaluation.
- Clarify that the insurer must determine eligibility in cases where the worker's claim was initially denied and is later accepted.
- Clarify that the eligibility condition requiring that the worker be available in Oregon includes a worker who is within commuting distance of Oregon.
- Include in the vocational eligibility criteria that the worker did not relinquish his or her rights to vocational assistance in writing.
- Clarify that a condition for ending eligibility, in addition to suitable employment for 60 days, is completion of any necessary worksite modifications.
- Amend the list of labor market references that may be used to analyze the worker's labor market.
- Clarify that the insurer must not use any knowledge, skills, or abilities gained by the worker, at the worker's expense, after the date of injury or aggravation to determine the worker's eligibility for vocational assistance.
- Prescribe the conditions, time frames, and documentation applicable to a worker's self-sponsored training.
- Provide that basic training, on-the-job training, and occupational skills training may be extended by the insurer (beyond the time frames stated in rule).



John L. Shilts
Printed name

Oct. 3, 2012
Date

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings 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, when filings are accepted until 5:00 pm on the preceding workday.
ARC 930-2005

EMPLOYER-AT-INJURY PROGRAM

436-105-0003

Applicability of Rules

(1) These rules apply to:

(a) All individual Employer-at-Injury Programs begun on or after the effective date of these rules; and

(b) All reimbursement requests made to the division in accordance with OAR 436-105-0540(4) on or after the effective date of these rules regardless of the date an Employer-at-Injury Program began, unless the insurer requests that reimbursement be based on the rules in effect on the date an individual Employer-at-Injury Program began.

(2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

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

Stats. Implemented: ORS 656.622

436-105-0500

Insurer Participation in the Employer-At-Injury Program

(1) An insurer must be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

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

(a) Upon acceptance or reopening of a claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance must contain the following language:

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

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].

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

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer will administer the Employer-at-Injury Program according to these rules. The insurer must assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (5) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer wage subsidy requests as specified in OAR 436-105-0520(1);

(d) Make worksite modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3); and

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

(5) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the accepted or deferred conditions of the claim. The date the medical release is issued by the worker's medical service provider is considered the effective date if an effective date is not otherwise specified;

(b) Two types of medical release qualify under these rules:

(A) A medical release that states the worker's specific current or projected restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work.

(c) A medical release must cover any period of time for which benefits are requested.

(6) For the purposes of the Employer-at-Injury Program, a medical release, and any restrictions it contains, remains in effect until another medical release is issued by the worker's medical service provider. An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(7) The insurer must maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program reimbursement request. The insurer will maintain the following information at the authorized claim processing location(s):

(a) The worker's claim file;

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

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

(A) Payroll records must state the payroll period, wage rate(s), and the worker's gross wages for the wage subsidy period. The payroll record must also include the dates and hours worked each day if the worker has hourly restrictions;

(B) Insurers and employers may supplement payroll records with documentation of how the worker's earnings were calculated for the wage subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll record(s) nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days; and

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

(d) A legible copy of proof of purchase, providing proof the item was ordered during the Employer-at-Injury Program period and proof of payment of the item(s) for worksite modification purchases and Employer-at-Injury Program purchases;

(e) Written documentation of the insurer's decision to approve worksite modifications;

- (f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties;
 - (g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services/Oregon Health Authority, if applicable;
 - (h) The written acceptance by the worker when skills building is the transitional work; and
 - (i) Documentation, including course title and curriculum for a class or course of instruction when Employer-at Injury Program purchases are requested.
- Stat. Auth.: ORS 656.340, 656.622, 656.726(4)
Stats. Implemented: ORS 656.340, 656.622

436-105-0510

Employer Eligibility

- (1) The employer must maintain Oregon workers' compensation insurance coverage.
 - (2) The employer must be the employer at injury as defined in OAR 436-105-0005.
 - (3) The employer must be employing an eligible worker.
- Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622

436-105-0511

Worker Eligibility

- (1) The worker must have an Oregon workers' compensation injury or occupational disease claim at the time of the Employer-at-Injury Program.
 - (2) The worker must not be covered by the Injured Inmate Law.
- Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622

436-105-0512

End of Eligibility

The Employer-at-Injury Program will end:

- (1) When the worker or employer no longer meets the eligibility provisions stated in OAR 436-105-0510 and OAR 436-105-0511;
 - (2) When the worker's claim is closed or denied;
 - (3) When sanctions under OAR 436-105-0560 preclude eligibility;
 - (4) When the insurer ends the Employer-at-Injury Program at any time while the worker's claim is open; or
 - (5) Two years after the original date of acceptance of a non-disabling claim.
- Stat. Auth.: ORS 656.622, 656.726(4)
Stats. Implemented: ORS 656.622

436-105-0520 Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening, for a non-disabling claim or a disabling claim. If a non-disabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-at-Injury Program may be used again. Assistance available includes:

- (1) Wage subsidy, which provides 50 percent reimbursement of the worker's gross wages for the wage subsidy period. Wage subsidy benefits are subject to the following conditions:

- (a) A wage subsidy may not exceed 66 workdays and must be completed within a 24 consecutive month period;
 - (b) A wage subsidy may not start or end with paid leave;
 - (c) If the worker has hourly restrictions, reimbursable paid leave must be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement;
 - (d) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.
- (2) Worksite modification, which means altering a work site by renting, purchasing, modifying, or supplementing equipment to enable a worker to perform the transitional work within the worker's limitations that resulted in the worker's EAIP eligibility, or to prevent a worsening of the worker's conditions. Worksite modification assistance is subject to the following conditions:
- (a) The insurer determines the appropriate worksite modification(s) for the worker;
 - (b) The insurer documents its reason(s) for approving the modification(s);
 - (c) The worksite modification(s) must be ordered during the Employer-at-Injury Program; and
 - (d) Worksite modification items become the employer's property upon the end of the Employer-at-Injury Program.
- (3) Employer-at-Injury Program purchases, which are limited to:
- (a) Tuition, books, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skills building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum expenditure is \$1,000. Tuition, books, fees, and required materials will be provided under the following conditions:
 - (A) The insurer determines the instruction will help the worker enhance an existing skill or develop a new skill, and documents its decision; and
 - (B) Costs for tuition, books, fees, and required materials may be fully reimbursed if the worker began participation in the class or course while eligible for the Employer-at-Injury Program;
 - (b) Clothing required for the job, except clothing the employer normally provides. Clothing becomes the worker's property. Maximum expenditure is \$400.
- (4) Employer-at-Injury Program purchases of tools and equipment, including consumables, must be required for the worker to perform transitional work. These purchases will be the employer's property.
- (5) Worksite modification and purchases of tools and equipment are limited to a combined maximum reimbursement of \$5,000.
- (6) All modifications and purchases made by the employer in good faith are reimbursable, even if the worker refuses to return to work, or if the worker agreed to take part in training and then later refused to attend training.

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

Stats. Implemented: ORS 656.622

436-105-0540

Employer-at-Injury Program Reimbursement Procedures

- (1) Reimbursements may include wage subsidy, Employer-at-Injury Program purchases, and worksite modification.

- (2) The insurer is entitled to a program administrative cost of \$120.00 for the first reimbursement request of an Employer-at-Injury Program. A subsequent request for reimbursement for the same Employer-at-Injury Program is not entitled to an additional program administrative cost.
- (3) The insurer must receive all required documentation for reimbursement within one year from the end of the Employer-at-Injury Program in order to qualify for reimbursement. The insurer must date stamp each reimbursement request document with the receipt date.
- (4) The insurer must submit the request for reimbursement (Form 2360) to the division within one year and 30 days from the end of the Employer-at-Injury Program.
- (5) The employer-at-injury reimbursement request must be a minimum of \$100. The associated administrative costs will also be eligible for reimbursement.
- (6) Subsequent requests less than \$100 will be eligible for reimbursement. However, the requests will not be eligible for reimbursement of a subsequent administrative cost.
- (7) If the original request was less than \$100, but the amended request is at least \$100, the request and the associated administrative costs will be eligible for reimbursement.
- (8) When the division finds the insurer has submitted an Employer-at-Injury Program reimbursement request that is incomplete or contains an error, the division may return the form to the insurer for correction. The insurer has 60 days from the date the insurer receives the reimbursement request, or one year and 30 days from the end of Employer-at-Injury Program eligibility, whichever is greater, to make the corrections and return the corrected form to the division.
- (9) The insurer may send an Employer-at-Injury Program reimbursement request to the division when a claim was initially denied and was subsequently accepted after the Employer-at-Injury Program eligibility ended and more than one year and 30 days have passed. In that case, the insurer must send a completed Employer-at-Injury Program reimbursement request to the division within 60 days of the first order or stipulation and order accepting the claim. A copy of the order accepting the claim, or stipulation and order accepting the claim must be attached.
- (10) The insurer may request reimbursement for a qualifying Employer-at-Injury Program that took place prior to claim denial even if the claim is denied at the time the reimbursement request is sent to the division.
- (11) Amended reimbursement requests must be sent to the division within one year and 30 days from the end of the Employer-at-Injury Program eligibility except as provided in section (6) of this rule. The insurer may not request additional administrative cost reimbursement for filing an amended reimbursement request.
- (12) An amended reimbursement request must clearly state that it is an amendment and cite the corrected information.
- (13) The insurer will not use Employer-at-Injury Program costs subject to reimbursement for rate making, 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 Employer-at-Injury Program costs do not affect the employer's rates or dividend.
- (14) If a preferred worker employed by an eligible employer with active premium exemption incurs a new injury, the claim is subject to claim cost reimbursement under OAR 436-110. If the worker subsequently enters an Employer-at-Injury Program, program costs are to be separated from claim costs and will not be reimbursed as claim costs.

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

Stats. Implemented: ORS 656.622

PREFERRED WORKER PROGRAM

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) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

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

Stats. Implemented: ORS 656.622

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 eligibility" means the date the division determines a worker is a preferred worker.
- (4) "Date of hire" means the date the worker starts work as a preferred worker.
- (5) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.
- (6) "Disability" means permanent physical or mental restriction(s) or limitation(s) caused by an accepted disabling Oregon workers' compensation claim that limits the worker from performing one or more of the worker's regular job duties.
- (7) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.
- (8) "Division approval" means a preferred worker agreement signed by an authorized division representative.
- (9) "Employer at injury" means the organization in whose employ the worker sustained the injury or occupational disease.
- (10) "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 that 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.
- (11) "Fund" means the Workers' Benefit Fund.
- (12) "Insurer" means the insurance company or self-insured employer responsible for the workers' compensation claim.
- (13) "Premium" means the monies paid to an insurer for the purpose of purchasing workers' compensation insurance.
- (14) "Regular employment" means the job the worker held at the time of the injury, claim for aggravation, or own motion opening.
- (15) "Reimbursable wages" means the worker's gross wages for the wage subsidy period.
- (16) "Worksite" means a primary work area that 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

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 reemployment assistance available from the fund. A notice must be issued:

(a) Within 5 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, mailing addresses, or e-mail address 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 St NE, P.O. Box 14480, Salem, Oregon 97309-0405. Or write to the preferred worker program at: pwp.oregon@state.or.us

(4) Under section (2) of this rule, the notice to the employer must appear in bold type and contain the following language:

As the employer of an injured worker, you may be eligible for valuable preferred worker program incentives if the worker cannot return to regular work and has permanent limitations caused by the injury.

If the worker's preferred worker program eligibility has not been determined, you may contact the Workers' Compensation Division for an eligibility review.

To be eligible for exemption from paying workers' compensation premiums for this worker for three years, you must:

- **Bring back your preferred worker to a new or modified job; and**
- **Notify us within 90 days of the date the worker is determined eligible or within 90 days of the date you bring the worker back to work, whichever is later.**

To request all other preferred worker program benefits, you must contact the Workers' Compensation Division within 180 days of the worker's claim closure date.

To find out more 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 St NE, P.O. Box 14480, Salem, Oregon 97309-0405. Or write to the preferred worker program at: pwp.oregon@state.or.us

(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 that grants initial permanent disability after the latest opening of the worker's claim; and

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

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

Stats. Implemented: ORS 656.340(1), (2), (3); 656.622; 656.726(4)

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 date premium exemption started. 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 must 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) To qualify for premium exemption the employer at injury or aggravation must bring back its preferred worker to a new or modified job and notify its insurer within 90 days from the date of eligibility or the date of hire, whichever is later. Premium exemption starts on the date of hire or the date of eligibility, whichever is later.

(5) If a worker's preferred worker eligibility has not been determined as of the date of hire, the worker or the employer at injury or aggravation may request a preferred worker eligibility review. If the worker is eligible, the Workers' Compensation Division will issue a Preferred Worker Identification Card to the worker. The employer must notify its insurer of the worker's preferred worker status within 90 days of the eligibility date on the preferred worker identification card. Premium exemption starts on the date of hire or the date of eligibility, whichever is later.

(6) If the employer is not the employer-at-injury or aggravation, the worker discloses preferred worker status to that employer, and the employer notifies the insurer within 90 days from the

date of hire that they have hired a preferred worker, premium exemption starts on the date of hire.

(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.

(8) If a business changes its name, is sold, merged, or otherwise changes its ownership during a premium exemption period, the premium exemption period is three years from the date the exemption was initiated by the original business. There will not be an additional three-year premium exemption period allowed due to the change(s) in the business.

(9) If an employer changes the job duties of a preferred worker during the premium exemption period, there is no change in the three year premium exemption period. There will not be an additional three-year premium exemption period allowed due to changes in the preferred worker's job duties with the same employer.

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

Stats. Implemented: ORS 656.622

436-110-0336

Wage Subsidy – Employer at Injury Activated

Wage subsidy 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 be deferred until:

(a) The worksite modification is complete, or

(b) The employer accommodates the worker's injury-caused restrictions while waiting for the worksite modification to be complete.

(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(4), 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

436-110-0347

Employment Purchases – Worker Activated

Conditions for use of employment purchases by a worker are as follows:

(1) Except for moving expenses, placement assistance, 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 obtain or 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, placement assistance, or the miscellaneous category, only the worker's signature is required.

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

Stats. Implemented: ORS 656.622

VOCATIONAL ASSISTANCE TO INJURED WORKERS

436-120-0001

Authority for Rules

The director has adopted OAR 436-120 by the director's authority under ORS 656.340 and 656.726(4).

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.262(6), 656.268, 656.313, 656.331(1)(b), 656.340, 656.447, 656.740, 656.745, and ORS Ch. 183

436-120-0002

Purpose of Rules

The purpose of these rules is to prescribe uniform standards for determining eligibility, delivery and payment for vocational services to injured workers, procedures for resolving disputes, and to establish standards for the certification of vocational counselors and providers.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.012(2)(c), 656.258, 656.268(1), 656.340

436-120-0003

Applicability of Rules

- (1) These rules govern vocational assistance under the workers' compensation law on or after the effective date of these rules except as OAR 436-120 otherwise provides.
- (2) The director's decisions under OAR 436-120-0008 regarding eligibility will be based on the rules in effect on the date the insurer issued the notice. The director's decisions regarding the nature and extent of assistance will be based on the rules in effect at the time the assistance was provided. If the director orders future assistance, such assistance must be provided in accordance with the rules in effect at the time assistance is provided.
- (3) Under these rules a claim for aggravation or reopening a claim to process a newly accepted condition will be considered a new claim for purposes of vocational assistance eligibility and vocational assistance, except as otherwise provided in these rules.
- (4) Under ORS 656.206, when a worker receiving permanent total disability incurs a new compensable injury, the worker is not entitled to vocational assistance.
- (5) The requirement for the director's advance approval of services eligible for claims cost reimbursement pursuant to OAR 436-120-0720(7) will apply to any actions taken after the effective date of these rules.
- (6) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.
- (7) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows:
 - (a) If a document is mailed, it will be considered filed on the date it is postmarked.
 - (b) If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date.
 - (c) If a document is delivered, it must be delivered during regular business hours to be considered filed on that date.
- (8) Time periods allowed for a filing or submission to the division are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or

legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.
Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.206, 656.340

436-120-0005

Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the workers' compensation law and as follows:

- (1) "Administrative approval" means approval of the director.
- (2) "Authorized return to work plan" means a completed return-to-work plan form (Form 1081 for training or Form 1083 for direct employment), signed by the worker, the insurer, and the vocational counselor who developed the plan.
- (3) "Cost-of-living matrix" is a chart issued annually by the director in Bulletin 124 that publishes the conversion factors, effective July 1 of each year, used to adjust for changes in the cost-of-living rate from the date of injury to the date of calculation. The conversion factor is based on the annual percentage increase or decrease in the average weekly wage, as defined in ORS 656.211.
- (4) "Delivered" means physical delivery to the Workers' Compensation Division during regular business hours.
- (5) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.
- (6) "Division" refers to the Workers' Compensation Division of the Department of Consumer and Business Services.
- (7) "Employer at injury" means an employer in whose employ the worker sustained the compensable injury or occupational disease.
- (8) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.
- (9) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer. A vocational assistance provider acting as the insurer's delegate may provide notices and warnings required by OAR 436-120.
- (10) "Likely eligible" means the worker will be unable to return to regular or other suitable work with the employer-at-injury or aggravation or is unable to perform all of the duties of the regular or suitable work and it is reasonable to believe that the barriers are caused by the accepted conditions.
- (11) "Mailed" means postmarked to the last known address.
- (12) "Permanent employment" is a job with no projected end date or a job that had no projected end date at time of hire. Permanent employment may be year-round or seasonal.
- (13) "Physical demand characteristics of work" strength rating: The physical demands strength rating reflects the estimated overall strength requirements of the job, which are considered to be important for average, successful work performance. The following definitions are used: "occasionally" is an activity or condition that exists up to 1/3 of the time; "frequently" is an activity or condition that exists from 1/3 to 2/3 of the time; "constantly" is an activity or condition that exists 2/3 or more of the time.
 - (a) Sedentary work (S): Exerting up to 10 pounds of force occasionally or a negligible amount of

force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(b) Light work (L): Exerting up to 20 pounds of force occasionally, or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for sedentary work. Even though the weight lifted may be only a negligible amount, a job should be rated light work: (1) when it requires walking or standing to a significant degree; (2) when it requires sitting most of the time but entails pushing or pulling of arm or leg controls; or (3) when the job requires working at a production rate pace entailing the constant pushing or pulling of materials even though the weight of those materials is negligible. NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

(c) Medium work (M): Exerting 20 to 50 pounds of force occasionally, or 10 to 25 pounds of force frequently, or greater than negligible up to 10 pounds of force constantly to move objects. Physical demand requirements are in excess of those for light work.

(d) Heavy work (H): Exerting 50 to 100 pounds of force occasionally, or 25 to 50 pounds of force frequently, or 10 to 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for medium work.

(e) Very heavy (VH): Exerting in excess of 100 pounds of force occasionally, or in excess of 50 pounds of force frequently, or in excess of 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for heavy work.

(14) "Reasonable cause" may include, but is not limited to, a medically documented limitation in a worker's activities due to illness or medical condition of the worker or the worker's family, financial hardship, incarceration for less than six months, or circumstances beyond the reasonable control of the worker. "Reasonable cause" for failure to provide information or participate in activities related to vocational assistance will be determined based upon individual circumstances of the case.

(15) "Reasonable labor market": An occupation can be said to have reasonable employment opportunities if competitively qualified workers can expect to find equivalent jobs in the occupation within a reasonable period of time. A reasonable period of time, for workers in the majority of occupations, would be the six months that they could collect regular unemployment insurance benefits, if they were entitled to them.

(16) "Regular employment" means the employment the worker held at the time of the injury or at the time of the claim for aggravation, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of aggravation, the employment the worker held on the last day of work prior to the aggravation claim. If the basis for potential eligibility is a reopening to process a newly accepted condition, "regular employment" is the employment the worker held at the time of the injury; when the condition arose after claim closure, "regular employment" is determined as if it were an aggravation claim.

(17) "Substantial handicap to employment," as determined under OAR 436-120-0340, means the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment. "Knowledge," "skills," and "abilities" have meanings as follows:

(a) "Knowledge" means an organized body of factual or procedural information derived from the

worker's education, training, and experience.

(b) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(c) "Abilities" means the cognitive, psychological, and physical capability to apply the worker's knowledge and skills.

(18) "Suitable employment" or "suitable job" means employment or a job:

(a) For which the worker has the necessary physical capacities, knowledge, skills and abilities;

(b) Located where the worker customarily worked, or within reasonable commuting distance of the worker's residence. A reasonable commuting distance is no more than 50 miles one-way modified by other factors including, but not limited to:

(A) Wage of the job. A low wage may justify a shorter commute;

(B) The pre-injury commute;

(C) The worker's physical capacities, if they restrict the worker's ability to sit or drive for 50 miles;

(D) Commuting practices of other workers who live in the same geographic area; and

(E) The distance from the worker's residence to the nearest cities or towns that offer employment opportunities;

(c) That pays or would average on a year-round basis a suitable wage as defined in section (19) of this rule;

(d) That is permanent. Temporary work is suitable if the worker's job at injury was temporary; and the worker has transferable skills to earn, on a year-round basis, a suitable wage as defined in section (19) of this rule;

(e) For which a reasonable labor market as described under OAR 436-120-0340 is documented to exist; and

(f) That is modified or new employment resulting from an employer at injury activated use of the Preferred Worker Program, under OAR 436-110:

(A) Nine months from the effective date of the premium exemption if there are no worksite modifications, or

(B) Twelve months from the date the department determines the worksite modification is complete, or

(C) If the worker is terminated for cause, or

(D) If the worker voluntarily resigns for a reason unrelated to the work injury.

(19) "Suitable wage" means:

(a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage as defined in OAR 436-120-0007.

(b) For the purpose of providing or ending vocational assistance, a wage as close as possible to 100 percent of the adjusted weekly wage. This wage may be considered suitable if less than 80 percent of the adjusted weekly wage, if the wage is as close as possible to the adjusted weekly wage.

(20) "Training" means a vocational rehabilitation service provided to a worker who is enrolled and actively engaged in an approved "Return-to-Work Plan; Training" as documented on Form 1081.

(21) "Transferable skills" means the knowledge and skills demonstrated in past training or employment that make a worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.

(22) "Vocational assistance" means any of the services, goods, allowances, and temporary disability compensation under these rules to assist an eligible worker return to work. This does

not include activities for determining a worker's eligibility for vocational assistance.

(23) "Vocational assistance provider" means an insurer or other public or private organization, registered under these rules to provide vocational assistance to injured workers.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Sta. Impltd.: ORS 656.340

436-120-0006

Administration of Rules

(1) At any time, the director may order the insurer to determine eligibility or provide specified vocational assistance to achieve compliance with ORS chapter 656 and these rules. The order may be appealed as provided by statute.

(2) Orders issued by the division in carrying out the director's authority to administer and to enforce ORS chapter 656 and these rules are considered orders of the director.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.313, 636.340

436-120-0007

Establishing the Adjusted Weekly Wage to Determine Suitable Wage

To determine a suitable wage as defined in OAR 436-120-0005 the insurer must first establish the adjusted weekly wage as described in this rule. The insurer must calculate the "adjusted weekly wage" whenever determining or redetermining a worker's eligibility.

(1) For the purposes of this rule, the following definitions apply:

(a) "Adjusted weekly wage" is the wage currently paid as calculated under this rule.

(b) "Cost-of-living adjustments" or "collective bargaining adjustments" are increases or decreases in the wages of all workers performing the same or similar jobs for a specific employer. These adjustments are not variations in wages based on skills, merit, seniority, length of employment, or number of hours worked.

(c) "Earned income" means gross wages, salary, tips, commissions, incentive pay, bonuses, and the reasonable value of other consideration (housing, utilities, food, etc.) received from all employers for services performed from all jobs held at the time of injury or aggravation. Earned income also means gross earnings from self-employment after deductions of business expenses excluding depreciation. Earned income does not include fringe benefits such as medical, life or disability insurance, employer contributions to pension plans, or reimbursement of the worker's employment expenses such as mileage or equipment rental.

(d) "Job at aggravation" means the job or jobs the worker held on the date of the aggravation claim; or, for a worker not employed at time of aggravation, the last job or concurrent jobs held prior to the aggravation. Volunteer work does not constitute a job for purposes of this subsection.

(e) "Job at injury" is the job on which the worker originally sustained the compensable injury. For an occupational disease, the job at injury is the job the worker held at the time there is medical verification that the worker is unable to work because of the disability caused by the occupational disease.

(f) "Permanent, year-round employment" is permanent employment in which the worker worked or was scheduled or projected to work in 48 or more calendar weeks a year. Paid leave is counted as work time. Permanent year-round employment includes trial service. It does not include employment with an annual salary set by contract or self-employment.

(g) "Temporary disability" means wage loss replacement for the job at injury.

(h) "Trial service" is employment designed to lead automatically to permanent, year-round employment subject only to the employee's satisfactory performance during the trial service period.

(2) The insurer must determine the nature of the job at injury or the job or jobs at aggravation by contacting the employer or employers to verify the worker's employment status. All figures used in determining a weekly wage by this method must be supported by verifiable documentation such as the worker's state or federal tax returns, payroll records, or reports of earnings or unemployment insurance payments from the Employment Department. The insurer must calculate the worker's adjusted weekly wage as described by this rule.

(3) When the job at injury or the job at aggravation was temporary or seasonal, calculate the worker's average weekly wage as follows, then convert to the adjusted weekly wage as described in section (6) of this rule:

(a) When the worker's regular employment is the job at injury and the worker did not hold more than one job at the time of injury, and did not receive unemployment insurance benefits during the 52 weeks prior to the injury, the worker's average weekly wage is the same as the wage upon which temporary disability is based.

(b) When the worker's regular employment is the job at aggravation and the worker did not hold more than one job at the time of aggravation, and did not receive unemployment insurance benefits during the 52 weeks prior to the aggravation, the worker's average weekly wage is calculated using the same methods used to calculate temporary disability as described in OAR 436-060-0025.

(c) If the worker held more than one job at the time of the injury or aggravation, and did not receive unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation, divide the worker's earned income by the number of weeks the worker worked during the 52 weeks prior to the date of injury or aggravation.

(d) If the worker held one or more jobs at the time of the injury or aggravation, and received unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation, combine the earned income with the unemployment insurance payments and divide the total by the number of weeks the worker worked and received unemployment insurance payments during the 52 weeks prior to the date of the injury or aggravation.

(4) When the job at injury was other than as described in section (3) of this rule, use the weekly wage upon which temporary disability was based, and then convert the weekly wage to the adjusted weekly wage as described in section (6) of this rule.

(5) When the job at aggravation was other than as described in section (3) of this rule, the worker's average weekly wage is calculated using the same methods used to calculate temporary disability as described in OAR 436-060-0025, and then converting to the adjusted weekly wage as described in section (6) of this rule.

(6) Adjusted weekly wage: After arriving at the weekly wage under this rule, establish the adjusted weekly wage by determining the percentage increase or decrease from the date of injury or aggravation, or last day worked prior to aggravation, to the date of calculation, as follows:

(a) Contact the employer at injury regarding any cost-of-living or collective bargaining adjustments for workers performing the same job. Adjust the worker's weekly wage by any percentage increase or decrease;

(b) If the employer at injury is no longer in business and the worker's job was covered by a union contract, contact the applicable union for any cost-of-living or collective bargaining adjustments.

Adjust the worker's weekly wage by the percentage increase or decrease;

(c) If the employer at injury is no longer in business or does not currently employ workers in the same job category, adjust the worker's weekly wage by the appropriate factor from the cost-of-living matrix; or

(d) If the worker's regular employment was the employment the worker held at the time of aggravation, adjust the worker's weekly wage by the appropriate factor from the cost-of-living matrix.

Stat. Auth.: ORS 656.340(9), ORS 656.726(4)

Stat. Impltd.: ORS 656.340(5) and (6)

436-120-0012

General Requirements For Notices and Warnings

(1) All notices and warnings to the worker issued under OAR 436-120 must:

(a) Be in writing, signed, and dated.

(b) State the basis for the decision.

(c) Include the effective date of each action in the heading.

(d) Cite the relevant rule(s).

(e) Include the worker's appeal rights. All notices and warnings except those notifying a worker of entitlement to training or deferral of vocational assistance eligibility must contain the worker's appeal rights in bold type, as follows:

"If you disagree with this decision, you should contact (insert the person's name and the insurer name) within five days of receiving this letter to discuss your concerns. If you are still dissatisfied, you must contact the Workers' Compensation Division within 60 days of receiving this letter or you will lose your right to appeal this decision. A consultant with the division can talk with you about the disagreement and, if necessary, will review your appeal. The address and telephone number of the division are: Employment Services Team, Workers' Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 503-947-7816 or 1-800-452-0288 ext. 1719."

(f) Include the telephone number of the Ombudsman for Injured Workers: 1-800-927-1271; and

(g) Be mailed to the worker by both regular and certified mail.

(2) All copies of notices must be mailed to the worker's legal representative. Failure to send a copy to the worker's legal representative stays the appeal period until the worker's legal representative receives a copy of the notice.

(3) Unless otherwise indicated under OAR 436-120-0017, copies of all notices must be mailed to the division at the same time they are mailed to the worker.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340

436-120-0016

Warning Letters

(1) A warning letter can be issued at any time during the vocational eligibility evaluation or vocational assistance process.

(2) Warning letters do not require specific language in the headings but must include a heading clearly indicating the purpose of the warning.

(3) A warning letter must state what the worker must do, and by when, to avoid ineligibility or the ending of eligibility or training.

(4) A warning letter must include the worker's appeal rights under OAR 436-120-0012(1)(e).
Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340

436-120-0017

Types of Notices

When the insurer takes any of the actions listed below, it must issue the corresponding notices, using the headings listed in this rule. If a notice is used for more than one purpose, it must include all the headings that apply:

(1) The NOTICE OF ELIGIBILITY must:

(a) Include the date the worker became eligible.

(b) Inform the worker which category of vocational assistance the insurer will provide:

(A) NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE and NOTICE OF ENTITLEMENT TO TRAINING, or

(B) NOTICE OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE and NOTICE OF ENTITLEMENT TO DIRECT EMPLOYMENT SERVICES.

(c) Include the worker's rights and responsibilities;

(d) Include the following statement in bold type:

“You have the right to request a return-to-work plan conference if the insurer does not approve a return-to-work plan within 90 days of determining you entitled to a training plan, or within 45 days of determining you entitled to a direct employment plan. The purpose of the conference will be to identify and remove all obstacles to return-to-work plan completion and approval. The insurer, the worker, the plan developer, and any other parties involved in the return-to-work process must attend the conference. The insurer or the worker may request a conference with the division if other delays in the vocational rehabilitation process occur. Your request for this conference should be directed to the Employment Services Team of the Workers’ Compensation Division. The address and telephone number of the division are: Employment Services Team, Workers’ Compensation Division, P.O. Box 14480, Salem, Oregon 97309-0405; 503-947-7816 or 1-800-452-0288 ext. 1719.”

(e) Include the current list of vocational assistance providers (published with Bulletin 151), and explain that the worker and the insurer must agree on the selection of a vocational assistance provider.

(f) Include the following language in bold type:

“If you have questions about the vocational counselor selection process, contact (use appropriate reference to the insurer). If you still have questions, call the Workers' Compensation Division at 1-800-452-0288 ext. 1719.”

(g) Include information about the Preferred Worker Program.

(h) Explain what the worker can do if he or she disagrees with something the insurer does.

(i) Explain direct employment services and state the worker is not entitled to training, if the worker is entitled to direct employment services but not training.

(2) The NOTICE OF INELIGIBILITY FOR VOCATIONAL ASSISTANCE must:

(a) Include information about services which may be available at no cost from the Employment Department or the Office of Vocational Rehabilitation Services.

(b) Include a brief description of the Preferred Worker Program benefits, and contact information. The information can be part of the notice, or a separate document attached to the notice.

(c) Include a list of suitable occupations the worker can perform without being retrained, if the notice is based on a finding of "no substantial handicap."

(3) The NOTICE OF DEFERRAL OF VOCATIONAL ASSISTANCE ELIGIBILITY DETERMINATION must:

(a) Inform the worker the insurer deferred the vocational eligibility process because the employer at injury has activated preferred worker benefits.

(b) Inform the worker that, if the job with the employer at injury does not begin on the hire date listed in the job offer letter, the worker can ask the insurer, within 30 days, to determine vocational eligibility.

(c) Include the following language in bold type:

"If you have questions about the deferral of the vocational eligibility process, contact (use appropriate reference to the insurer). If you still have questions contact the Workers' Compensation Division's toll free number 1-800-452-0288 ext. 1719."

(4) The NOTICE OF DENIAL OF VOCATIONAL ASSISTANCE BENEFITS must:

(a) Identify what vocational assistance benefits the insurer denies and explain why. This notice is not to be used for finding a worker ineligible or ending a worker's eligibility for vocational assistance.

(b) Explain why the insurer denies the proposed return-to-work plan, if the notice is used for that purpose.

(5) The NOTICE OF END OF TRAINING:

(a) Must include the date the training plan ended. The effective date is the worker's last date of attendance.

(b) Must state whether the worker is entitled to further training.

(c) Does not have to be submitted to the division.

(6) The NOTICE OF END OF ELIGIBILITY FOR VOCATIONAL ASSISTANCE:

(a) Must include the date when eligibility ended. The effective date is the worker's last date of eligibility.

(b) Must include the reason the worker's eligibility for vocational assistance is ending. However, this notice is not required if the insurer is ending the worker's eligibility because the worker has given up his or her vocational assistance rights through a claims disposition agreement.

(c) Does not have to be submitted to the division.

(7) The NOTICE OF SELECTION OF VOCATIONAL ASSISTANCE PROVIDER, must be issued when a vocational assistance provider is agreed upon by the worker and the insurer.

(8) The NOTICE OF CHANGE OF VOCATIONAL ASSISTANCE PROVIDER, must be issued anytime there is a change in vocational assistance provider.

(9) The return-to-work plan and amendments must:

(a) Be reported using Form 1081, Return-to-Work Plan, Training, or Form 1083 Return-to-Work Plan, Direct Employment.

(b) Indicate what the changes are and why they are necessary, if the insurer amends the proposed plan.

(10) The Vocational Closure Report (Form 2800) must:

(a) Include the effective date for the end of eligibility.

(b) Include the reason for the end of eligibility.

(c) Include return-to-work and vocational assistance provider information.

(d) Be issued for each eligible worker within 30 days after eligibility ends.

Stat. Auth.: ORS 656.340(9), 656.726(4)

436-120-0115

Conditions Requiring Completion of a Vocational Eligibility Evaluation

(1) If the worker has an accepted disabling claim, the insurer is required to begin an eligibility evaluation within five days of any of the following conditions:

(a) The insurer receives information that indicates the worker is likely eligible for vocational assistance;

(b) The worker is medically stationary, is not currently receiving vocational assistance, and:

(A) Has not returned to or been released to regular employment; or

(B) Has not returned to other suitable employment with the employer at the time of injury or aggravation.

(c) The worker enters into a claim disposition agreement, retains vocational assistance rights, and is likely eligible for vocational assistance; or

(d) Eligibility was previously determined under the current opening of the claim and the insurer has accepted new condition(s).

(2) Even if conditions in (1) are met, the insurer is not required to do an eligibility evaluation if the worker is deceased, the worker has a permanent total disability award, or the worker's claim is reopened under a board's own motion.

(3) Nothing in these rules prevents an insurer from finding a worker eligible and providing vocational assistance at any time.

(4) If the insurer receives a request for vocational assistance from the worker and the insurer is not required to determine eligibility, the insurer must notify the worker in writing, within 14 days of the request. The notice must include at least:

(a) The reason(s) an eligibility determination is not required;

(b) The circumstances that, if present, would trigger a requirement to determine eligibility; and

(c) Instructions to contact the division at 503-947-7816 or 1-800-452-0288 ext. 1719 with questions about vocational assistance eligibility requirements and procedures.

(5) The insurer must determine eligibility if the worker's claim was initially denied and is later accepted as disabling and all appeals of the denial have been exhausted.

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

Stat. Impltd.: ORS 656.340

436-120-0145

Vocational Assistance Eligibility Criteria

(1) A worker whose permanent total disability benefits have been terminated by a final order is eligible for vocational assistance.

(2) A worker is eligible for vocational assistance if all the following conditions are met:

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

(b) The worker is available for vocational assistance in Oregon or within commuting distance of Oregon.

(A) If the worker is not available in Oregon or within commuting distance of Oregon, the insurer must consider the worker available in Oregon if the worker states in writing that within 30 days of being determined eligible for vocational assistance the worker will move back to Oregon, or to within commuting distance of Oregon, at the worker's own expense.

(B) The requirement that the worker be available in Oregon or within commuting distance of

Oregon for vocational assistance does not apply if the Oregon subject worker did not work and live in Oregon at the time of the injury.

(c) As a result of the limitations caused by the injury or aggravation, the worker:

(A) Is not able to return to regular employment;

(B) Is not able to return to suitable and available work with the employer at injury or aggravation; and

(C) Has a substantial handicap to employment and requires assistance to overcome that handicap.

(d) The worker was not employed in suitable employment for at least 60 days after the injury or aggravation.

(e) The worker did not refuse or fail to make a reasonable effort in available light-duty work intended to result in suitable employment. Prior to finding the worker ineligible, the insurer must document the existence of one or more suitable jobs that would be available for the worker after completion of the light-duty work. If the employer-at-injury offers such employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(f) The worker is available for vocational assistance. If the worker is not available, the insurer must determine if the reasons are for reasonable or unreasonable cause prior to ending the worker's eligibility. If the reason was for incarceration, this reason must be cited in the notice to the worker. Declining vocational assistance to accept modified or new employment that results from an employer-at-injury activated use of the Preferred Worker Program, under OAR 436-110, is reasonable cause.

(g) The worker did not refuse or otherwise relinquish his or her rights to vocational assistance in writing.

(3) The worker must participate in the vocational assistance process and must provide relevant information. If the worker does not participate, or fails to provide relevant information, the insurer must issue a written warning before finding the worker ineligible under this rule.

(4) The worker must not misrepresent a matter material to evaluating eligibility.

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

Stat. Impltd.: ORS 656.206, 656.340

436-120-0165

End of Eligibility for Vocational Assistance

A worker's eligibility ends when any of the following conditions apply:

(1) Based on new information that did not exist or that could not have been obtained with reasonable effort at the time the insurer determined eligibility, the worker no longer meets the eligibility requirements.

(2) The worker has been employed in suitable employment as described in OAR 436-120-0005(18) for at least 60 days after the date of injury or date of aggravation, and any necessary worksite modification is in place.

(3) The worker, prior to beginning an authorized return-to-work plan, refused an offer of suitable employment. If the employer-at-injury offers employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(4) The worker, prior to beginning an authorized return-to-work plan, left suitable employment after the injury or aggravation for a reason unrelated to the limitations caused by the injury.

(5) The worker, prior to beginning an authorized return-to-work plan, refused or failed to make a reasonable effort in available light-duty work intended to result in suitable employment. Prior to ending eligibility, the insurer must document the existence of one or more suitable jobs that

would be available for the worker after completion of the light-duty work. If the employer-at-injury offers such employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(6) The worker, after completing an authorized training plan, refused an offer of suitable employment.

(7) The worker declined or became unavailable for vocational assistance. The insurer must determine if the reasons are for reasonable or unreasonable cause prior to ending the worker's eligibility. If the reason was for incarceration, this reason must be cited in the notice to the worker. Declining vocational assistance to accept modified or new employment that results from an employer-at-injury activated use of the Preferred Worker Program, under OAR 436-110, is reasonable cause.

(8) The worker refused a suitable training site after the vocational counselor and worker have agreed in writing upon a return-to-work goal.

(9) The worker failed after written warning to participate in the development or implementation of a return-to-work plan. No written warning is required if the worker fails to attend two consecutive training days and fails, without reasonable cause, to notify the vocational counselor or the insurer by the close of next business day.

(10) The worker's lack of suitable employment cannot be resolved by providing vocational assistance. This includes circumstances in which the worker cannot benefit from, or participate in, vocational assistance because of medical conditions unrelated to the injury.

(11) The worker misrepresented information relevant to providing vocational assistance.

(12) The worker refused after written warning to return property provided by the insurer or reimburse the insurer as required. No vocational assistance will be provided under subsequent openings of the claim until the worker returns the property or reimburses the funds.

(13) The worker misused funds provided for the purchase of property or services. No vocational assistance will be provided under subsequent openings of the claim until the worker reimburses the insurer for the misused funds.

(14) After written warning the worker continues to harass any participant to the vocational process. This section does not apply if such behavior is the result of a documented medical or mental condition.

(15) The worker entered into a claim disposition agreement and disposed of vocational rights. The parties may agree in writing to suspend vocational services pending approval by the Workers' Compensation Board. The insurer must end eligibility when the Worker's Compensation Board approves the claims disposition agreement that disposes of vocational assistance rights. No notice regarding the end of eligibility is required.

(16) The worker received maximum direct employment services and is not entitled to other categories of vocational assistance.

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

Stat. Impltd.: ORS 656.340

436-120-0175

Redetermining Eligibility for Vocational Assistance

If a worker was previously determined ineligible or the worker's eligibility ended, the insurer must redetermine eligibility within 35 days of notification of a change of these circumstances:

(1) The worker, for reasonable cause, was unavailable for vocational assistance and is now available.

(2) The worker's lack of suitable employment could not be resolved by providing vocational assistance. The insurer may require the worker to provide evidence that circumstances have changed.

(3) The worker declined vocational assistance to accept modified or new employment that resulted from an employer-at-injury-activated use of preferred worker benefits under OAR 436-110. If the job was not suitable, the worker must request redetermination within 30 days of termination of the employment for which preferred worker benefits were provided.

(4) The worker was not available for vocational assistance in Oregon or within commuting distance of Oregon. The worker must request redetermination within six months of receiving the insurer's notice that he or she was not eligible for this reason.

(5) The worker, who was not authorized to work in the United States, is now authorized to work in the United States. Within six months of the date of the worker's receipt of the insurer's notice of ineligibility or end of eligibility, the worker must:

(a) Request redetermination; and

(b) Submit evidence to the insurer that the worker has applied for authorization to work in the United States and is awaiting a decision by the U.S. Citizenship and Immigration Services (USCIS). The worker must provide the insurer with a copy of any decision by the USCIS within 30 days of receipt. The insurer must redetermine eligibility upon receipt of documentation of the worker's authorization to work in the United States.

(6) The worker, who returned to work prior to becoming medically stationary, informs the insurer that he or she is likely eligible for vocational assistance and requests a determination within 60 days of the mailing date of the Notice of Closure.

(7) Prior to claim closure, a worker's limitations due to the injury became more restrictive.

(8) Prior to claim closure, the insurer accepts a new condition that was not considered in the original determination of the worker's eligibility.

(9) The worker's average weekly wage is redetermined and increased.

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

Stat. Impltd.: ORS 656.340

436-120-0340

Determining Substantial Handicap

(1) A certified vocational counselor must perform a substantial handicap evaluation as part of the eligibility determination when applicable.

(2) To complete the substantial handicap evaluation the vocational counselor must submit a report documenting the following information:

(a) Relevant work history for at least the preceding five years;

(b) Level of education, proficiency in spoken and written English or other languages, where relevant, and achievement or aptitude test data if it exists;

(c) Adjusted weekly wage as determined under OAR 436-120-0007 and suitable wage as defined by OAR 436-120-0005;

(d) Permanent limitations due to the injury;

(e) An analysis of the worker's transferable skills, if any;

(f) A list of physically suitable jobs for which the worker has the knowledge, skills and abilities, that pay a suitable wage, and for which a reasonable labor market is documented to exist as described in subsection (g) below;

(g) An analysis of the worker's labor market using standard labor market reference materials,

including but not limited to information provided by the Employment Department's Oregon Labor Market Information System (OLMIS) and Oregon Wage Information (OWI). When using OWI data, the presumed standard will be the 10th percentile unless there is sufficient evidence that a higher or lower wage is more appropriate; and

(h) Consideration of the vocational impact of any limitations that existed prior to the injury.

(3) When determining the worker's eligibility for vocational assistance, the insurer may include any knowledge, skills, and abilities the worker gained after the date of injury or aggravation that resulted from training provided by the employer; however, the insurer may not include any knowledge, skills, or abilities the worker gained at his or her own expense after the date of injury or aggravation.

Stat. Auth.: ORS 656.726(4)

Stat. Impltd.: ORS 656.340(5) and (6)

436-120-0443

Training

(1) Training services include but are not limited to plan development, training, monthly monitoring of training progress, and job placement services.

(2) The training plan must be developed and monitored by a certified vocational counselor.

(3) The selection of plan objectives and the kind of training must attempt to minimize the length and cost of training necessary to prepare the worker for suitable employment.

(4) If there are any changes made to the original training plan, an addendum to Form 1081 – Return to Work Plan must be completed, signed by all parties, and submitted to the director.

(5) Basic education may be offered, with or without other training components, to raise the worker's education to a level to enable the worker to obtain suitable employment.

(6) On-the-job training prepares the worker for permanent, suitable employment with the training employer and for employment in the labor market at large. On-the-job training must be considered first in developing a training plan.

(7) Occupational skills training is offered through a community college, based on a predetermined curriculum, at the training employer's location.

(8) Formal training may be offered through a vocational school licensed by an appropriate licensing body, community college, or other post-secondary educational facility that is part of a state system of higher education.

(9) Rehabilitation facilities training provides evaluation, training, and employment for severely disabled individuals.

(10) Notwithstanding OAR 436-120-0145(2), the director may order the insurer, or the insurer may elect, to provide training outside Oregon if such training would be more timely, appropriate, or cost effective than other alternatives.

(11) Training status continues during the following breaks:

(a) A regularly scheduled break of not more than six weeks between fixed school terms;

(b) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; or

(c) A period of illness or recuperation that does not prevent completion of the training by the planned date.

(12) A worker actively engaged in training must receive temporary disability compensation under ORS 656.268 and ORS 656.340.

(13) Temporary disability compensation is limited to 16 months unless extended to 21 months by the insurer. In no event will temporary disability compensation during training be paid for more than 21 months.

(14) Training costs may be paid for periods longer than 21 months. Reasons for extending training may include but are not limited to:

(a) Reasons beyond the worker's control.

(b) An "exceptional disability," defined as a disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury that results in impairment equal or greater than Class III as defined in OAR 436-035.

(c) An "exceptional loss of earning capacity" exists when no suitable training plan of 16 months or less is likely to eliminate the worker's substantial handicap to employment. The extension must allow the worker to obtain a wage as close as possible to the worker's adjusted weekly wage and at least 10 percent greater than could be expected with a shorter training program.

(15) An eligible worker is entitled to four months of job placement assistance after completion of training.

(16) When the worker returns to work following training, the insurer must monitor the worker's progress for at least 60 days to assure the suitability of the employment before ending eligibility.

(17) If the worker chooses a training plan period of longer than he or she is entitled to receive under these rules, the worker may supplement training provided by the insurer by completing "self-sponsored" training or studies. For the purpose of this rule, "self-sponsored" means the worker is obligated to pay for the training.

(a) The first day of training provided by the insurer will be considered the "training start date" and the last day of training provided by the insurer will be the "training end date."

(b) All self-sponsored training must be completed before the training start date unless the parties otherwise agree.

(c) During self-sponsored training, the insurer may provide optional services under OAR 436-120-0455, including but not limited to payment of expenses for tuition, fees, books, and supplies.

(d) The return-to-work plan support document must describe how the worker-sponsored training and the training provided by the insurer will combine to prepare the worker for suitable employment.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340

436-120-0445

Training Requirements

(1) Basic education is limited to six months unless extended by the insurer.

(2) On-the-job training

(a) Training time is limited to 12 months unless extended by the insurer.

(b) The insurer must reimburse the training employer for a portion of the worker's wages.

(c) The on-the-job training contract between the training employer, the insurer, and the worker must include, but is not limited to:

(A) The worker's name;

(B) The employer's legal business name;

(C) The employer's current workers' compensation insurance policy number;

(D) The name of the individual providing the training;

(E) The training plan start and end dates;

- (F) The job title and duties;
 - (G) The skills to be taught;
 - (H) The base wage and the terms of wage reimbursement;
 - (I) An agreement that the employer will pay all taxes normally paid on the entire wage and will maintain workers' compensation insurance for the trainee; and
 - (J) An acknowledgement that the training may not prepare the worker for jobs elsewhere, if the training prepares a worker for a job unique to the training site.
 - (d) The insurer must pay temporary disability compensation as provided in ORS 656.268.
 - (e) Absent a need to accommodate the worker's documented medical condition or class schedule, the worker's schedule must be the same as for a regular full-time employee.
 - (3) Occupational skills training
 - (a) Training is limited to 12 months unless extended by the insurer.
 - (b) The training is primarily for the worker's benefit. The worker does not receive wages.
 - (c) Training does not establish any employer-employee relationship with the training employer. The training employer makes no guarantee of employing the worker when the training is completed.
 - (d) The training employer has a sufficient number of employees to accomplish its regular work and the training of the worker, and the worker does not displace an employee.
 - (e) Absent a need to accommodate the worker's documented medical condition or class schedule, the worker's schedule must be the same as for a regular full-time employee.
 - (4) Formal training
 - (a) Training time is limited to 16 months unless extended by the insurer.
 - (b) Course load must be consistent with the worker's abilities, limitations, and length of time since the worker last attended school.
 - (c) Courses must relate to the vocational goal.
 - (5) If the worker begins or completes training between the date of injury and the date of the eligibility determination, and then the insurer finds the worker eligible for vocational assistance and finds the worker's training suitable, the insurer must reimburse the worker for costs required by that training and verified by the insurer or the director, including temporary disability as required under ORS 656.268 and ORS 656.340.
- Stat. Auth.: ORS 656.340(9), 656.726(4)
 Stat. Impltd.: ORS 656.340

436-120-0448

Reevaluating a Training Plan

- (1) A training plan must be re-evaluated when:
 - (a) A change occurs in the worker's limitations that may render the training inappropriate.
 - (b) In an academic program:
 - (A) The worker fails to maintain at least a 2.00 grade point average for two grading periods, or
 - (B) The worker fails to complete the minimum credit hours required under the training plan.
- (2) In an academic program, the vocational counselor must notify the insurer, and the insurer must give the worker a written warning of the possible end of training, at the first indication that the worker may:
 - (a) Fail to maintain a 2.00 grade point average for two consecutive grading periods, or
 - (b) Fail to complete the minimum credit hours in the training plan curriculum.
- (3) In a non-academic program, the vocational counselor must notify the insurer, and the insurer

must give the worker a written warning of the possible end of training, at the first indication that the worker's performance in training is unsatisfactory and may not result in employment in that field.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340

436-120-0449

Ending and Reevaluating a Training Plan

(1) Training ends and must be re-evaluated when:

(a) In an academic program:

(A) The worker fails, after written warning, to maintain at least a 2.00 grade point average for two consecutive grading periods, or

(B) The worker fails, after written warning, to complete the minimum credit hours in the training plan curriculum for two consecutive grading periods.

(b) In a non-academic program, the worker's performance in training is unsatisfactory and further training is not likely to result in employment in that field. The insurer must give the worker a written warning prior to ending the worker's training under this rule.

(2) A training plan re-evaluation may include a conference with the division, under OAR 436-120-0500(2).

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340

436-120-0451

Ending a Training Plan

Training ends when:

(1) The worker has successfully completed training;

(2) The worker's eligibility has ended under OAR 436-120-0165; or

(3) The worker is not enrolled and actively engaged in the training; however, none of the reasons for ending training described in OAR 436-120-0443(11) will cause the worker's training status to end.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340

436-120-0510

Return-to-Work Plan Support

(1) The worker and vocational counselor must work together to develop a return-to-work plan that includes consideration of the following:

(a) The worker's transferable skills;

(b) The worker's physical and mental capacities and limitations;

(c) The worker's vocational interests;

(d) The worker's educational background and academic skill level;

(e) The worker's pre-injury wage; and

(f) The worker's place of residence and that labor market.

(2) Return-to-work plan support must contain, but is not limited to, the following:

(a) Specific vocational goal(s) and projected return-to-work wage(s).

(b) A description of the worker's current medical condition, relating the worker's permanent

limitations to the vocational goals.

(c) A description of the worker's education and work history, including job durations, wages, Standard Occupational Classification (SOC) codes or other standardized job titles and codes, and specific job duties. The SOC codes can be found on the Oregon Employment Department OLMIS website.

(d) If a direct employment plan, a description of the worker's transferable skills that relate to the vocational goals and a discussion of why training will not bring the worker a wage significantly closer to 100 percent of the adjusted weekly wage at the time of injury.

(e) If a training plan, a discussion of why direct employment services will not return the worker to suitable employment.

(f) A summary of the results of any evaluations or testing. If the results do not support the goals, the vocational assistance provider must explain why the goals are appropriate.

(g) A summary of current labor market information that shows the labor market supports the vocational goals and documents that the worker has been informed of the condition of the labor market.

(h) A labor market search as prescribed in 436-120-0410(7), if needed.

(i) If the labor market information does not support the goals, the vocational assistance provider must explain why the goals are appropriate. The worker and worker's representative, if any, must acknowledge in writing an awareness of the poor labor market conditions and a willingness to proceed with the plan in spite of these conditions. In the case of a training plan, this acknowledgment must include an understanding the insurer will provide no additional training should the worker be unable to find suitable employment because of the labor market.

(j) A job analysis prepared by the vocational assistance provider, signed by the worker and by the attending physician or a qualified facility designated by the attending physician, and based on a visit to a worksite comparable to what the worker could expect after completing training. If the attending physician is unable or unwilling to address the job analysis and does not designate a facility as described above, the insurer may submit the job analysis to a qualified facility of its choice. The insurer must submit the resulting information to the attending physician for concurrence. If the attending physician has not responded within 30 days of the date of request for concurrence, the plan may proceed.

(k) A signed on-the-job training contract, if applicable.

(l) A description of the curriculum, which must be term by term if the curriculum is for formal training.

(m) If material pertinent to a return-to-work plan is contained in a previous eligibility the insurer may attach a copy of the evaluation to the plan.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340

436-120-0710

Direct Worker Purchases: Kinds

The insurer must provide the direct worker purchases described in sections (1) through (12) of this rule without regard to the worker's pre- or post-injury income. The insurer may not require the worker to submit a financial statement in order to qualify for direct worker purchases listed in sections (1) through (12). In determining the necessity of direct worker purchases described in sections (13) through (18), the insurer must consider, among all factors, the worker's pre-injury net income as compared with the worker's post-injury net income. Permanent partial disability

award payments will not be considered as income. For the insurer to find the purchase necessary, the worker's pre-injury net income, as adjusted by the cost-of-living matrix, must be greater than the worker's post-injury net income, unless the worker can establish financial hardship. The insurer may require the worker to provide information about expenditures or family income when the worker claims a financial hardship.

(1) Tuition, fees, books, and supplies for training or studies. Payment is limited to those items identified as mandatory by the instructional facility, trainer, or employer. The insurer must pay the cost in full, and will not require the worker to apply for grants to pay for tuition, books or other expenses associated with training.

(2) Wage reimbursement for on-the-job training. The amount must be stipulated in a contract between the training employer and the insurer.

(3) Travel expenses for transportation, meals, and lodging required for participation in vocational assistance. For the purposes of this section, "participation in vocational assistance" includes, but is not limited to job search, required meetings with the vocational assistance provider, and meetings with employers or at training sites as required by the plan or plan development. The conditions and rates for payment of travel expenses are as follows:

(a) Transportation. Costs will be paid at public transportation rates when public transportation is available; otherwise, mileage will be paid at the rate published in Bulletin 112. Costs incidental to mileage, such as parking fees, also will be paid. For workers receiving temporary total disability or equivalent income, private car mileage will be paid only for mileage in excess of the miles the worker traveled to and from work at the time of injury. Mileage payment in conjunction with moving expenses will be allowed only for one vehicle and for a single one-way trip. To receive reimbursement for private car mileage, the worker must provide the insurer with a copy of the driver's valid driver's license and proof of insurance coverage.

(b) Meals and lodging, overnight travel. For overnight travel, meal and lodging expense will be reimbursed at the rate published in Bulletin 112.

(c) Special travel costs. Payment will be made in excess of the amounts specified in this section when special transportation or lodging is necessary because of the physical needs of the worker, or when the insurer finds prevailing costs in the travel area are substantially higher than average.

(4) Tools and equipment for training or employment. Payment is limited to items identified as mandatory for the training or initial employment, such as starter sets. Purchases will not include what the trainer or employer ordinarily would provide to all employees or trainees in the training or employment, or what the worker possesses.

(5) Moving expenses. Payment is limited to workers with employment or training outside reasonable commuting distance. In determining the necessity of paying moving expenses, the insurer may consider the availability of employment or training which does not require moving, or which requires less than the proposed moving distance. Payment is limited to moving household goods weighing not more than 10,000 pounds. If necessary, payment includes reasonable costs of meals and lodging for the worker's family and mileage pursuant to subsection (3)(a) of this rule.

(6) Second residence allowance. The purpose of the second residence is to enable the worker to participate in training outside reasonable commuting distance. The allowance must equal the rental expense reasonably necessary, plus not more than \$200 a month toward all other expenses of the second residence, excluding refundable deposits. In order to qualify for second residence allowance, the worker must maintain a permanent residence.

(7) Primary residence allowance. This allowance is applicable when the worker must change

residence for training or employment. Payment includes the first month's rent and the last month's rent only if required prior to moving in.

(8) Medical examinations and psychological examinations for conditions not related to the compensable injury when necessary for determining the worker's ability to participate in vocational assistance.

(9) Physical or work capacities evaluations.

(10) Living expense allowance during vocational evaluation. Payment is limited to workers involved in a vocational evaluation at least five hours daily for four or more consecutive days, and not receiving temporary disability payments. The worker will not be barred from receiving a living expense allowance if the worker is unable to participate five hours daily because of limitations caused by the injury. Payment must be based on the worker's temporary total disability rate if the worker's claim were reopened.

(11) Work adjustment, on-the-job evaluation, or situational assessment cost(s).

(12) Membership fees and occupational certifications, licenses, and related testing costs. Payment under this category is limited to \$500.

(13) Clothing required for participation in vocational assistance or for employment. Allowable purchases do not include items the trainer or employer would provide or the worker possesses.

(14) Child or disabled adult care services. These services are payable when required to enable the worker to participate in vocational assistance at rates prescribed by the State of Oregon's Department of Human Services. For workers receiving temporary total disability compensation or equivalent income, these costs will be paid only when in excess of what the worker paid for such services at the time of injury, adjusted using the cost-of-living matrix.

(15) Dental work, eyeglasses, hearing aids, and prosthetic devices. These are not related to the compensable injury and enable the worker to obtain suitable employment or participate in training.

(16) Dues and fees of a labor union. Payment will be limited to initiation fees, or back dues and one month's current dues.

(17) Vehicle rental or lease. There is no reasonable alternative enabling the worker to participate in vocational assistance or accept an available job. The worker must provide the insurer with proof of a valid driver's license and insurance coverage. Payment under this category is limited to \$1,000.

(18) Any other direct worker purchase the insurer considers necessary for the worker's participation as described in the introductory paragraph of this rule. Payment under this category is limited to \$1,000.

Stat. Auth.: ORS 656.340(9), 656.726(4)

Stat. Impltd.: ORS 656.340