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WCD Admin. Order 19-1990

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BOARD OF STATE CLERKS
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BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

In the Matter of the Amendment of)
OAR Chapter 436, Workers' Compensation)
Division, Division 60, Claims)
Administration, Rule 045, Payment of)
Compensation During Worker Incarceration)

ORDER OF ADOPTION
OF TEMPORARY RULE



The director of the Department of Insurance and Finance, pursuant to the rule making authority in ORS 656.726(3); and in accordance with the procedure provided by ORS 183.335, amends OAR Chapter 436, Workers' Compensation Division, Division 60, Claims Administration, Rule 045, Payment of Compensation During Worker Incarceration.

The amendment is being adopted by Temporary Rule as provided by ORS 183.335(5) and (6), without prior notice. Statement of Findings: I conclude that failure to act promptly will result in serious prejudice to the public interest.

OAR 436-60-045, as amended in this Order of Adoption, corrects an error in the rule adopted June 18, 1990, in WCD Administrative Order 8-1990. The earlier temporary rule incorrectly interpreted Section 50, Chapter 2, Oregon Laws 1990, Special Session (SB 1197). Review of Tape 4 of the proceedings before the Special Committee of the Legislature on May 3, 1990, reveals the intent of Section 50 as substantially different than the Director's original interpretation.

IT IS THEREFORE ORDERED:

(1) OAR Chapter 436, Division 60, Rule 045, as set forth in Exhibit "A", attached hereto, certified a true copy and hereby made a part of this Order, is temporarily adopted effective September 18, 1990, replacing Temporary Rule 045 adopted in WCD Administrative Order 8-1990.

(2) A certified true copy of the Order of Adoption and this Rule, Exhibit "A", with Exhibit "B" consisting of the Citation of Statutory Authority, Statement of Need and Documents Relied Upon, hereby made a part of this Order, be filed with the Secretary of State.

Order of Adoption
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(3) A copy of the Rules and attached Exhibit "B" be filed with the Legislative Counsel, pursuant to the provisions of ORS 183.715 within 10 days after filing with the Secretary of State.

Dated this 18th day of September, 1990.

DEPARTMENT OF INSURANCE AND FINANCE



Theodore R. Kulongoski, Director

Distribution: A through V
Y through AA

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EXHIBIT "A"

OREGON ADMINISTRATIVE RULE
CHAPTER 436
DIVISION 60

CLAIMS ADMINISTRATION

PAYMENT OF COMPENSATION DURING WORKER INCARCERATION

436-60-045 (1) A worker is not eligible to receive temporary disability compensation during incarceration for commission of a crime. All other compensation benefits shall be provided the worker as if the worker was not incarcerated. For the purpose of this rule:

(a) A worker is incarcerated for commission of a crime when:

(A) In pretrial detention; or

(B) Imprisoned following conviction for a crime.

(b) A worker is not incarcerated if the worker is on parole or work release status.

(2) Temporary disability compensation, if due and payable, shall be paid the worker within 14 days of the date the insurer becomes aware the worker is no longer incarcerated.

(3) A worker who is incarcerated shall have the same right to claim closure under ORS 656.268 as a worker who is not incarcerated. Any permanent disability awarded shall be paid the same as if the worker was not incarcerated.

Hist: Filed 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temp)
Amended 9/18/90 as WCD Admin. Order 19-1990, eff. 9/18/90 (Temp)

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EXHIBIT "B"

BEFORE THE DIRECTOR OF THE
DEPARTMENT OF INSURANCE AND FINANCE
OF THE STATE OF OREGON

In the Matter of the Amendment of)	CITATION OF STATUTORY
OAR Chapter 436, Workers' Compensation)	AUTHORITY; STATEMENT OF
Division. Division 60, Claims)	NEED; PRINCIPAL DOCUMENTS
Administration, Rule 045, Payment of)	RELIED UPON; FISCAL AND
Compensation During Worker Incarceration))	ECONOMIC IMPACT

1. Citation of Statutory Authority: The statutory authority for promulgation of this rule is ORS 656.726(3), and Section 50, Chapter 2, Oregon Laws 1990, Special Session.

2. Statement of Need: OAR 436-60-045 corrects an error made in the same rule as adopted in WCD Administrative Order 8-1990, which defined "incarceration for commission of a crime" as meaning that a worker was not entitled to temporary disability compensation while incarcerated for conviction for a crime. A review of testimony and discussion on Tape 4, May 3, 1990, before the Special Committee of the Legislature, reveals the intent of the new law was to preclude the payment of disability compensation for a worker incarcerated for any reason, since the worker was not in the labor force.

3. Principal Documents Relied Upon:

- a. ORS Chapter 656.
- b. Chapter 2, Oregon Laws 1990, Special Session.
- c. Tape 4, May 3, 1990, Special Committee of the 1990 Oregon Legislature, Special Session, at counter 154 (approximately).

4. Fiscal and Economic Impact: The following entities are economically affected: (a) Workers; (b) Employers; (c) Self-Insured Employers; and, (d) insurers.

Dated this 18th day of September, 1990, at Salem, Oregon.

DEPARTMENT OF INSURANCE AND FINANCE

 Theodore R. Kulongoski, Director