

**BEFORE THE DIRECTOR OF THE  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
OF THE STATE OF OREGON**

In the Matter of the Amendment of	)	
OAR Chapter 436, Workers' Compensation	)	ORDER OF ADOPTION
Division, Division 60, Claims Administration.	)	OF TEMPORARY RULES
	)	

The Director of the Department of Consumer and Business Services, pursuant to the rule making authority in ORS 656.726(3), and in accordance with the procedure provided by ORS 183.355, amends OAR Chapter 436, Workers' Compensation Division, Division 60, Claims Administration.

These rules are being adopted by Temporary Rules, 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.

These rules are being adopted by Temporary Rules, 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.

Temporary rule is necessary to carry out the Legislative intent in 1995 Or. Laws Chapter 332, Sections 15 and 16, ORS 656.210 and ORS 656.212. It is necessary to revise Rule 003, Applicability of Rules, Rule 020, Payment of Temporary Total Disability Compensation and Rule 030, Payment of Temporary Partial Disability Compensation to assure that application of the three-day waiting period before the injured worker receives disability payment is consistently applied by all insurers and self-insured employers. Rule 030 is further revised to reflect that temporary partial disability is based on wages at time of injury rather than the worker's "highest earning power" to be consistent with 1995 Or. Laws Chapter 332, Section 16.

**PURSUANT TO ADA GUIDELINES, ALTERNATE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE TO QUALIFIED INDIVIDUALS UPON REQUEST TO THE DIVISION.**

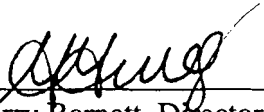
**IT IS THEREFORE ORDERED:**

- (1) OAR Chapter 436, Division 60, Claims Administration, as set forth in Exhibit "A", attached hereto, a certified true copy and hereby made part of this Order, is temporarily adopted effective August 18, 1995.

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

Dated this 18<sup>th</sup> day of August, 1995.

DEPARTMENT OF CONSUMER  
AND BUSINESS SERVICES

  
for Kerry Barnett, Director

Attachments

Distribution: WCD-ID, S, T, U, AT, CE, FM, IP, IA, LU, EG

**EXHIBIT "A"**

**CHAPTER 436  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION  
DIVISION 60**

**CLAIMS ADMINISTRATION**

**APPLICABILITY OF RULES**

**436-60-003** These rules govern claims processing and carry out the provisions of:

- (1) ORS 656.210. Temporary total disability;
- (2) ORS 656.212. Temporary partial disability;
- (3) ORS 656.230. Lump sum payments;
- (4) 656.236. Disposition of compensable claims;
- (5) ORS 656.262. Responsibility for processing and payment of compensation, sight drafts, acceptance and denial and reporting of claims, and penalties for payment delays;
- (6) ORS 656.264. Required reporting of information to the Department;
- (7) ORS 656.265. Notices of accidents from workers;
- (8) ORS 656.268. Insurer claim closures;
- (9) ORS 656.307. Determination of responsibility for compensation payments;
- (10) ORS 656.325. Required medical examinations, suspension of compensation, injurious practices, claimant's duty to reduce disability, and reduction of benefits for failure to participate in rehabilitation;
- (11) ORS 656.331. Notice to worker's attorney; and,

CHAPTER 436  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

(12) ORS 656.726(3). The Department's powers and duties generally.

**Stat. Auth.:** ORS 656.210, ORS 656.212, ORS 656.230, ORS 656.236, ORS 656.262, ORS 656.264, ORS 656.265, ORS 656.268, ORS 656.307, ORS 656.325, ORS 656.331, and ORS 656.726(3)

**Hist:** Filed 4/27/78 as WCD Admin. Order 6-1978, eff. 4/27/78  
Amended 1/11/80 as WCD Admin. Order 1-1980, eff. 1/11/80  
Amended 12/23/81 as WCD Admin. Order 6-1981, eff. 1/1/82  
Amended 12/29/83 as WCD Admin. Order 8-1983, eff. 1/1/84  
Amended 4/4/84 as WCD Admin. Order 3-1984, eff. 4/4/84  
Renumbered from 436-54-003, May 1, 1985  
Amended 12/12/85 as WCD Admin. Order 8-1985, eff. 1/1/86  
Amended 12/18/87 as WCD Admin. Order 4-1987, eff. 1/1/88  
Amended 12/22/89 as WCD Admin. Order 7-1989, eff. 1/1/90  
Amended 6/18/90 as WCD Admin. Order 8-1990, eff. 7/1/90 (Temporary)  
Amended 11/30/90 as WCD Admin. Order 26-1990, eff. 12/26/90  
Amended 1/3/92 as WCD Admin. Order 1-1992, eff. 2/1/92  
Amended 2/28/94 as WCD Admin. Order 94-050, eff. 3/1/94 (Temp)  
Amended 8/11/94 as WCD Admin. Order 94-055, eff. 8/28/94  
Amended 8/18/95 as WCD Admin. Order 95-058, eff. 8/18/95 (Temp)

## PAYMENT OF TEMPORARY TOTAL DISABILITY COMPENSATION

**436-60-020** (1) An employer may pay compensation under ORS 656.262(4). Making such payments does not constitute a waiver or transfer of the insurer's duty to determine the worker's entitlement to benefits, or responsibility for the claim to ensure timely benefit payments. The employer shall provide adequate payment documentation as the insurer may require to meet its responsibilities.

(2) Pursuant ORS 656.210(3), no disability payment is due the worker for temporary total disability suffered during the first three calendar days after the worker leaves work as a result of a compensable injury, unless the worker is totally disabled after the injury and the total disability continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a hospital within 14 days of the first onset of total disability. For the purpose of this rule, admittance as an inpatient to a hospital can be any time following the date of the injury, but must be within 14 days of the first onset of total disability to waive the three day waiting period. The three day waiting period is three consecutive calendar days beginning with the day the worker first loses time from work as a result of the compensable injury, subject to the following:

(a) If the worker leaves work but returns and completes the work shift without loss of wages, that day shall not be considered the first day of the three day waiting period.

(b) If the worker does not complete the work shift, that day shall be considered the first day of the three day waiting period even if there is no loss of wages. For the purpose of this rule, an attending physician's authorization of time loss is not required to begin the waiting period, however the waiting period would not be payable unless authorized.

(c) If the worker returns to any type of work within 14 days of leaving work, no disability payment is due the worker for the three day waiting period. The three day waiting period, as it applies to loss of wages, is discussed in OAR 436-60-030.

(3) For workers employed with varying days off, the three day wait will be determined using the work schedule of the week the worker begins losing time from work. For such workers who are no

CHAPTER 436  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

---

longer employed with the employer at injury, the three day wait will be based on the work schedule of the week the worker was injured.

(4) No compensation is due and payable for any period of time where the insurer has requested from the worker's attending physician verification of the worker's inability to work and the physician cannot verify it pursuant to ORS 656.262(4)(c), unless the worker has been unable to receive treatment for reasons beyond the worker's control. Before withholding compensation under this section, the insurer shall inquire of the worker whether a reason beyond the worker's control prevented the worker from receiving treatment. If no valid reason is found or the worker refuses to respond or cannot be located, the insurer shall document its file regarding those findings. The insurer shall provide the Department a copy of the documentation within 20 days, if requested. When verification of temporary disability is received from the attending physician, the insurer shall pay compensation within 14 days of receiving the verification of any authorized period of time loss, unless otherwise denied.

(5) No compensation is due and payable when the medical service provider has exhausted its authority to authorize temporary disability payments and the worker has not received authorization for additional time loss from a provider qualified to be an attending physician. When the worker has failed to obtain such authorization, the insurer may terminate the payment of temporary disability when all three of the following apply:

(a) The insurer has provided prior notice to the worker explaining that the worker's temporary disability will terminate, unless the insurer has received written authorization of further temporary disability from an attending physician;

(b) The insurer has inquired of the worker whether the worker has obtained a new attending physician who has authorized ongoing time loss. If the worker does not have a new attending physician who has authorized ongoing time loss or the worker refuses to respond or cannot be located, the insurer shall document its file regarding those findings. The insurer shall provide the Department a copy of the documentation within 20 days, if requested; and

(c) The worker's failure to obtain authorization was within the worker's control. It is the worker's responsibility to ensure there is no lapse of authorization of time loss under this section.

(6) An insurer may suspend temporary disability benefits without authorization from the Division pursuant to ORS 656.262(4)(d) when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician;

(b) The insurer has sent a certified letter to the worker and a letter to the worker's attorney, at least 10 days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician; stating the time and date of the appointment; and giving the following notice, in prominent or bold face type:

**YOU MUST ATTEND THIS APPOINTMENT. IF THERE IS ANY REASON YOU CANNOT ATTEND, YOU MUST TELL US BEFORE THE DATE OF THE APPOINTMENT. IF YOU DO NOT ATTEND, AND DO NOT HAVE A GOOD REASON FOR NOT**

CHAPTER 436  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
WORKERS' COMPENSATION DIVISION

---

**ATTENDING, YOUR TEMPORARY DISABILITY BENEFITS WILL BE SUSPENDED WITHOUT FURTHER NOTICE, AS PROVIDED BY ORS 656.262(4)(d).**

(c) The insurer verifies that the worker has missed the rescheduled appointment;

(d) The insurer sends a letter to the worker, the worker's attorney and the Department giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the letter being the day benefits are suspended, and the following notice, in prominent or bold face type:

**SINCE YOU MISSED A REGULAR APPOINTMENT WITH YOUR DOCTOR, WE ARRANGED A RESCHEDULED APPOINTMENT. WE NOTIFIED YOU OF THE RESCHEDULED APPOINTMENT BY CERTIFIED MAIL AND WARNED YOU THAT YOUR BENEFITS WOULD BE SUSPENDED IF YOU FAILED TO ATTEND. SINCE YOU FAILED TO ATTEND THE RESCHEDULED APPOINTMENT WITHOUT PROVIDING A GOOD REASON, YOUR TEMPORARY DISABILITY BENEFITS HAVE BEEN SUSPENDED. IN ORDER TO RESUME YOUR BENEFITS, YOU MUST ATTEND A RESCHEDULED APPOINTMENT WITH YOUR DOCTOR WHO MUST VERIFY YOUR CONTINUED INABILITY TO WORK.**

(7) When a worker with an accepted disabling compensable injury who has not been determined medically stationary is required to leave work for any single period of four hours or more to receive medical consultation, examination or treatment with regard to the compensable injury, the worker shall receive temporary disability benefits calculated pursuant to ORS 656.212 for the period during which the worker is absent. However, such benefits are not payable if the employer pays wages for the period of absence.

(8) When concurrent temporary disability is due the worker as a result of two or more claims, the insurers may petition the Division to make a pro rata distribution of compensation due under ORS 656.210 and ORS 656.212. The insurer shall provide a copy of the request to the worker, and the worker's attorney if represented. The insurers shall not unilaterally prorate temporary disability without the approval of the Division. The Division may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of the insurers. The pro rata distribution ordered by the Division shall be effective only for benefits due as of the date all claims involved are in an accepted status. The order pro rating compensation will not apply to periods where any claim involved is in a deferred status.

(9) When concurrent temporary disability is due the worker as a result of two or more claims involving the same worker, the same employer and the same insurer, the insurer may make a pro rata distribution of compensation due under ORS 656.210 without an order by the Division. The worker shall receive compensation at the highest temporary disability rate of the claims involved.

(10) When a worker has a claim under a federal workers' compensation statute or the workers' compensation law of another state, territory, province, or foreign nation for the same injury or occupational disease as the claim filed in Oregon, the total amount of compensation paid or awarded under such other workers' compensation law shall be credited against the compensation due under









