

Workers' Compensation Focus

Workers' compensation rate declines for fourth straight year

by Mark Peterson

Workers' compensation premium rates for 2010 have been reduced by an average of 1.3 percent, thereby saving Oregon employers \$18.1 million. This is the fourth straight year the workers' compensation "pure" premium rate has gone down and the 20th straight year with no increase. This decrease reflects the Department of Consumer and Business Services' commitment to continued improvements in workplace safety and efforts to reduce workers' compensation costs.

Since 1991, Oregon's workers' compensation costs have declined more than 60 percent, and Oregon employers have saved \$17.4 billion, while benefits and services for workers have improved. The pure premium rate is the base rate employers pay their insurers for workers' compensation coverage.

Improved safety is a major reason rates have stayed down. With the help of Oregon OSHA, workplace injury and illness rates in Oregon have declined nearly 19 percent since 2004 and more than 50 percent since the late 1980s. And workers who are injured are returning to work faster, with the help of the Workers' Compensation Division return-to-work programs. Use of the Employer-at-Injury Program – the most widely used return-to-work program – has grown 100 percent during the past five years.

Furthermore, the division has taken several steps to reduce medical costs in workers' compensation, such as lowering pharmacy fees, encouraging the use of generic drugs, and working with the Medical Advisory Committee to screen the use of new and experimental medical procedures.

While saving money for employers, Oregon has continued to make changes to its workers' compensation system that benefit injured workers. Oregon's workers' compensation system is frequently lauded by national organizations, and other states trying to improve

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community
Workers' Compensation

The ABCs of WCD

Terms and abbreviations in this issue



beneficiary

An injured worker's spouse, domestic partner, child, or dependent entitled to receive payments under workers' compensation law (ORS 656.005).

House Bill (HB)

A legislative bill initiated in the House of Representatives of the Oregon Legislature.

Senate Bill (SB)

A bill initiated in the Senate of the Oregon Legislature.

temporary partial disability benefits (TPD)

Payment for wages lost when a worker is only able to perform modified or part-time work because of a compensable injury (ORS 656.212).

temporary total disability benefits (TTD)

Payment for wages lost when a worker is unable to work because of a compensable injury (ORS 656.210). ■

Key phone numbers and Web addresses

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Administrator's notebook

Workers' compensation community

by John L. Shilts

community
Workers' Compensation



We are on the cusp of an important anniversary for Oregon's workers' compensation. It's been 20 years since the "Mahonia Hall" reforms of Oregon's workers' compensation crisis of the late 1980s and the early 1990s.

In the 1980s, the Oregon Legislature and then Gov.

Neil Goldschmidt had the insight to focus on the two main customers the workers' compensation system was created to serve — employers and workers. Employer and labor representatives convened in the basement of the governor's residence, Mahonia Hall, to develop lasting workers' compensation reform for Oregon.

These Mahonia Hall reformers created a package of reform proposals and crafted a dynamic vision for how workers' compensation policy decisions would be made in the future. They created an advisory group of labor and management, the Workers' Compensation Management-Labor Advisory Committee, to meet publicly and seek cooperation and help from other affected stakeholders in the workers' compensation system in order to provide recommendations and advice to the legislature and governor.

In May 1990, after significant debate and clarification of the package of recommendations, the legislature met in a special session and passed Senate Bill 1197. This legislation dramatically changed the landscape of Oregon's workers' compensation system. And, one thing we know for certain, Oregon's progress didn't happen with just the work of management and labor. Our success did not come out of thin air. The individuals involved in the Mahonia Hall reforms provided the foundation that became the road map. Since that time, it has been up to all of us to implement the Mahonia Hall reformers' vision and achieve a successful workers' compensation system.

Celebration set for May 3

A celebration to mark the 20th anniversary of the workers' compensation reforms will be held Monday, May 3, in Salem. The event, from 10:30 a.m. to noon, will be held in the Oregon Capitol Galleria.

Each of you plays a part in this story. We all participate, we are all responsible, and we can all share in this success. For example, workers cannot always get the medical care they need or go back to work without the help of their medical providers, vocational providers, claims examiners, and attorneys. Also, employers cannot always provide safe work environments without the assistance of their insurers and occupational safety consultants.

We cannot have a system that provides low, stable insurance costs without employers, workers, safety professionals, unions, and associations who are dedicated to the idea that it is vital that we all go home at the end of our work shift — alive and uninjured. Nor can this system exist without claims adjusters, vocational providers, health care providers, employers, and workers who work together to ensure that workers will return to work and be productive (even when workers have suffered an injury that may leave them impaired to some degree). Furthermore, we cannot improve the system without the input and ideas of all stakeholders.

It's no secret that we don't always agree with each other. Workers' compensation is still a technical and difficult subject to master. But, we are not divided by workers' compensation. We certainly have our challenges both now and in the future. However, over the past 20 years, we have become a tight-knit group. Together, we protect our system from threats and strive to strengthen any weak-

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Administrator's notebook — *Workers' compensation community, continued from page 3*

nesses that we encounter. We resolve many of our disputes and differences through civil discourse and, often, through building consensus.

We are a workers' compensation community. This community gives us the ability to identify, understand, analyze, and resolve challenges, and emerge even stronger. I think this community approach is unique and critical to Oregon's continued workers' compensation success. If we want to continue to build on the past 20 years, we need to keep up this great work.

The Workers' Compensation Division is recommitting to the idea of our workers' compensation community. We consider the idea of a workers' compensation community as a brand and a promise. From now on, you will see the word community appearing on our materials, publications, and brochures. When you see the word community, we want you to think:

- This is us; it means you, it means me, everyone in workers' compensation in Oregon.
- We are all part of the Oregon workers' compensation community.
- We are part of a successful, dynamic community.
- Others rely on us for their success, even if we never see them.

All communities have values. The Workers' Compensation Division developed a list of values that we think describes our community. These ideas are not anything new to Oregon workers' compensation customers and stakeholders. In fact, we are already upholding these values every day. Although each of us could come up with different words to describe our community, I think these principles have been coming into clearer focus since Mahonia Hall.

These values are:

- ☑ **Communication**
 - Listening to one another will help us improve the quality of our workers' compensation services and products.
- ☑ **Connection**
 - We all share responsibility and work together to improve outcomes.
- ☑ **Innovation**
 - Finding new, adaptive ways to connect with one another.
- ☑ **Integrity**
 - Building trustworthy and positive relationships with one another.
- ☑ **Commitment**
 - Serving something larger than our self-interests: our workers' compensation community.
- ☑ **Education**
 - We will achieve better outcomes through service, information, and training.

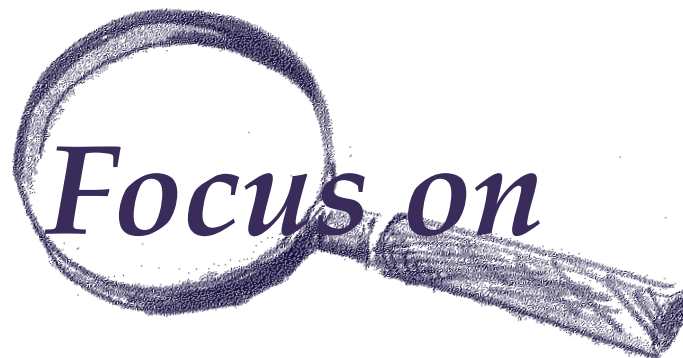
We promise to strive to achieve our mission, while keeping to the values of communication, connection, innovation, integrity, commitment, and education.

We commit to moving forward with you through the inevitable challenges, being mindful of the lessons of our history while embracing the innovations made necessary by the future. We promise to act with trust that these principles are kept and shared by all of the workers' compensation community. ■

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Changes to the administrative rules

by Fred Bruyns



The Workers' Compensation Division recently revised a number of the Oregon Administrative Rules (OAR) in Chapter 436. The 2009 Legislative Assembly prompted a number of the changes. The division made additional amendments in order to streamline reporting and other procedural requirements and to encourage greater use of re-employment assistance programs. All of the changes took effect Jan. 1, 2010. To review the rule amendments, refer to the revision-marked copies available on the division's Web site at <http://wcd.oregon.gov/policy/rules/rules.html>.

Procedural Rules, Rulemaking, Hearings, and Attorney Fees — OAR 436-001

House Bill 3345 raised the maximum attorney fee payable under ORS 656.385 from \$2,000 to \$3,000. HB 3345 also requires that the maximum fee be adjusted annually on July 1 by any increase in Oregon's average weekly wage. The division implemented HB 3345 by revising the attorney fee matrix in the rules. After consulting an advisory committee, the division consolidated most rules on attorney fees from OAR 436-010, 060, and 120 into OAR 436-001. Because attorney fees will increase along with increases in average wages, the matrix does not include dollar amounts, but instead lists fee ranges and maximums as percentages of Oregon's average weekly wage. The division has published actual dollar amounts in Bulletin 356 and will update this bulletin before July 1 of each year to reflect any increases in the fees.

Oregon Medical Fee and Payment Rules — OAR 436-009

Revised rules clarify the types of identification numbers health care providers must include on their bills. However, health care providers may submit bills for independent medical examinations in any form or format agreed to by the insurer and the provider.

Medical Services — OAR 436-010

These rules implement House Bill 2045 by including chiropractors, when serving as the worker's attending physician, among those health care providers who may make findings of impairment. These rules also implement HB 2197, which allows a health care provider who is not qualified to be an attending physician to provide compensable medical services to an injured worker for a period of 30 days or for 12 visits from the date of the first visit on the initial claim (rather than the date of injury), whichever happens first, without the authorization of an attending physician. Form 801, "Report of Job Injury or Illness," and Form 827, "Worker's and Health Care Provider's Report for Workers' Compensation Claims," are not sufficient to obtain release of HIV-related records; requesters must use a separate release form. Workers may now use Form 827 to make claims for new or omitted medical conditions. A health care provider must give the worker a copy of Form 3283, "A Guide for Workers Recently Hurt on the Job," when giving the worker a copy of Form 827. The division prints nearly all 827s used by workers and providers, and will print Form 3283 as an attachment to Form 827.

Claim Closure and Reconsideration — OAR 436-030

House Bill 2197 repealed ORS 656.270. That section required that notices of closure issued under ORS 656.268 include text informing parties of their appeal rights, as well a worker's right to consult with the Ombudsman for Injured Workers and to be represented by an attorney. Existing rules addressed most of these notice requirements, but

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Changes to the administrative rules, *continued from page 5*

the division added the right to attorney representation*. These rules also require that the notice of closure include information about a worker's right to request a vocational eligibility evaluation*. Additional amendments clarify procedures for administrative claim closure, allow requests for reconsideration of claim closure to be made by telephone, explain that the 14-day time frames for parties to submit certain records for the reconsideration process begin with the director's notice of the start date of the reconsideration, and require that evidence stored by the parties on audio media be sent to the division (for the purpose of reconsideration) only in transcribed form.

*Form 1644, as published by the Workers' Compensation Division, includes this required text.

Claims Administration — OAR 436-060

The Management-Labor Advisory Committee issued a "Death Benefit Study Report" in January 2009. The report recommended that the division take action to improve communication with families of deceased workers. Rulemaking is just one part of this effort; other publications and training are important components. These rules specify when and how to issue claim-related notices after a worker is deceased, regardless of the cause of death.

In addition, amended rules directly require the worker's employer to give the worker a copy of Form 3283, "A Guide for Workers Recently Hurt on the Job," when the worker files a claim. The rules provide that an ongoing request by the claimant's attorney for future claim-related documents remains in effect for 180 days (increased from 90 days). House Bill 2707 disallows payment of supplemental disability unless, within 60 days of mailing a request for verification, the claim processor receives verifiable documentation of wages from additional employment; rule amendments reflect this change. The rules also exclude secondary employment by Oregon subject volunteers from the calculation of supplemental disability. Insurer and self-insured employers must notify workers, as part of the notice of claim acceptance, about the two-year limitation to

request reimbursement of claim-related expenses. These rules made significant changes to facilitate the electronic payment of benefits to workers and beneficiaries by describing timeliness criteria, as well as notice and consent requirements. Finally, amended rules implement HB 3345 by setting conditions for the payment of penalty assessments to workers and fees to attorneys related to late payment of disputed claim settlement amounts.

Employer-at-Injury Program (EAIP) — OAR 436-105

Revised rules define "consumables" as purchases required to support the functioning of tools or equipment used during transitional work and allow purchase of consumables under the Employer-at-Injury Program. These rules also clarify that a worksite modification must be related to limitations that resulted in the worker's Employer-at-Injury Program eligibility or prevent the worsening of an accepted condition. Finally, the rules explain minimum reimbursement thresholds and when administrative costs are reimbursable.

Preferred Worker Program — OAR 436-110

These rules amend and clarify several definitions, including "date of hire." The definitions of "premium" and "reimbursable wages" are now consistent with the definitions in OAR 436-105. House Bill 2197 revised ORS 656.622 to make it clear that there is a three-year time limit that applies to all three components of premium exemption: insurance premium waiver, premium assessment waiver, and ratemaking exclusion. Related rules clarify procedures for use of premium exemption and also provide a more specific time limit for requesting claims cost reimbursement. The Preferred Worker Program now includes an employment purchase type — placement assistance provided by a certified vocational counselor or any public or private agency, reimbursable if the assistance results in employment that the preferred worker retains for at least 90 days. Placement assistance may not be combined with vocational assistance under OAR 436-120.

Vocational Assistance to Injured Workers — OAR 436-120

Revised rules provide that modified or new employment that results from an employer-at-injury-activated use of the Preferred Worker Program is considered “suitable” 12 months after the department determines a worksite modification is complete. Revised rules also implement House Bill 2705, which eliminated the requirement to complete a vocational eligibility evaluation if the worker is released to regular work or returned to other suitable work with the employer at injury or aggravation. The insurer is not required to do an eligibility evaluation if the worker is deceased or has a permanent total disability award. The rules reflect changes to ORS 656.340 by HB 2195 by allowing an insurer, without approval by the director, to extend time loss (during training) up to 21 months and by providing for “registration” rather than “authorization” of vocational assistance providers. Amended rules allow further training to a worker who has completed one training plan if there is a

reasonable cause to do so. Vocational fee schedule maximums are now listed as percentages of Oregon’s state average weekly wage rather than fixed dollar amounts – dollar amounts will be published annually in Bulletin 124 or its addendum. Certified counselors who are subject to continuing education requirements under these rules must take at least eight hours (formerly seven and a half hours) of training in ethical practices and at least six hours of training on the vocational assistance and re-employment assistance rules during the five years before certification renewal.

Electronic Data Interchange — OAR 436-160

The revised rules specify if certain proof-of-coverage data elements are mandatory or optional. ■

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their systems often look to Oregon as an example. Also, the workers’ compensation premium assessment remains at 4.6 percent in 2010 (4.8 percent for self-insured employers and employer groups) and the Workers’ Benefit Fund assessment remains at 2.8 cents-per-hour worked in 2010. Neither assessment has increased in the past eight years.

The workers’ compensation premium assessment covers operating expenses for WCD and the Workers’ Compensation Board; some operating costs of Oregon OSHA; workers’ compensation related functions of other DCBS divisions and offices; and the self-insured employer adjustment reserve and the self-insured employer group adjustment reserve.

The Workers’ Benefit Fund assessment covers the following expenditures: Workers with Disabilities

Program, Re-employment Assistance Program, Reopened Claims Program, Retroactive Program, noncomplying employer payments, supplemental disability benefit, rehabilitation payments, the Center for Research on Occupational and Environmental Toxicology at Oregon Health and Science University, payments due workers who have not received payment from an insurer in default, and Bureau of Labor and Industries activities related to investigation of alleged injured worker discrimination. ■

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Return to Work

Worksite modification

by Bruce Friedrichsen

The following story was volunteered by an employer and worker who wanted to share their experience and praise the Preferred Worker Program (PWP).

John suffered a severe low-back injury and could not return to his regular work as a sawyer, making him eligible for return-to-work help from the Preferred Worker Program.

Worker disability

When John started his new job as a burn table operator with Carothers & Son, Inc., a Eugene custom steel fabrication company, he told his new employer that he was a preferred worker and benefits were available. At first, his employer, Rick Boatwright (Carothers & Son), was not interested.

Work setting and obstacles

One problem that John faced in his job involved handling large sheets of steel, which commonly were five feet wide by 10 feet long and a half-inch thick. Although John could use an existing jib crane to move them, it was intended to offload steel from supply trucks. Since it was not designed to work with the burn table, he still needed to forcefully maneuver the sheets.



In addition, the crane's boom couldn't reach far enough, requiring John to use a great deal of strength to push and pull the steel plates onto the burn table. This duty exceeded his injury-caused permanent restrictions and caused him low-back pain on a daily basis. Also, the chair John used at his computer station was worn out and lacked adequate low-back support. After a period of time, Rick decided to pursue PWP worksite modification assistance, even though he and John were both skeptical that a "government program" would help them.

Modifications

The successful worksite modification consisted of relocating the burn table, purchasing a bridge crane and an electric hoist to handle the steel



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Vocational providers: Vocational assistance rule changes take some getting used to

by Andre Allen

One of the first things vocational assistance providers notice about the new 120 rules is that information previously in 430-120-0320 (Determining Eligibility), -0350 (Ineligibility and End of Eligibility), and -0360 (Redetermining Eligibility) seem to have disappeared. Actually, the information that was in those portions is now in 436-120-0115 (Conditions Requiring Completion of a Vocational Eligibility Evaluation), -0125 (Conditions of Postponement of the Vocational Eligibility Evaluation), -0135 (General Requirements and Timeframes for Vocational Eligibility Evaluations), -0145 (Vocational Assistance Eligibility Requirements), -0165 (End of Eligibility for Vocational Assistance), and -0175 (Redetermining Eligibility). The processes of determining, ending, and redetermining eligibility remain much the same as they were. The significant changes are discussed below.

Likely eligible — OAR 436-120-0005(9)

ORS 686.340 requires insurers to determine a worker's eligibility for vocational assistance if the worker is "likely eligible," but the statute does not define that term. The new 120 rules define "likely eligible" and place it at the center of the eligibility determination process. In fact, insurers now must determine eligibility only if the worker is likely eligible. (That is, if the worker cannot return to regular or other suitable work with the employer-at-injury or aggravation, or is unable to perform all the duties of such work, and it is reasonable to believe that the barriers are due to the accepted medical conditions.) Because of the new "likely eligible" criteria, insurers now will probably perform fewer eligibility determinations than they did under previous rules.

Reasonable cause — OAR 436-120-0005(13)

"Short term incarceration" was in the rules before, but it was not included in the definition for "reasonable cause." The new rules have added "incarceration for less than six months" to circumstances that could be considered "reasonable cause," along with existing examples such as illness or a medical condition affecting the worker or a family member, financial hardship, or other circumstances beyond the worker's reasonable control.

"Suitable employment" that results from an employer-at-injury use of the Preferred Worker Program — OAR 436-120-0005(17)(e)(B)

To make sure a job modified for a preferred worker under the Preferred Worker Program is suitable, the 120 rules require the insurer to wait 12 months before determining the worker's eligibility. Previously, the insurer was required to defer the eligibility determination for 12 months from *the effective date of the worksite modification agreement*. Under the new rules, however, the eligibility determination is deferred for 12 months from *the date the department determines the worksite modification is complete*.

Ending eligibility — OAR 436-120-0165

Most of the reasons listed under OAR 436-120-0165 for ending a worker's eligibility are based on fairly negative scenarios (e.g., the worker refused an offer of suitable employment, failed to cooperate, and misrepresented relevant information). This may make it hard to find a rule to cite when a worker's rehabilitation was successful, and he or she has returned to suitable employment. No problem! Under the new rules, you can cite OAR

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Vocational Providers: Vocational assistance rule changes take some getting used to, *continued from page 9*

436-120-0165(1), which reads: “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.” Then, refer back to the list of eligibility criteria in OAR 436-120-0145(2), and select the one that no longer applies [e.g., “(d) The worker was not employed in suitable employment for at least 60 days after the injury or aggravation”].

Length of training and time-loss payments during training — OAR 436-120-0440(2) and (3)

House Bill 2195 revised ORS 656.340 to streamline the vocational process by eliminating the requirement that insurers obtain the director’s approval to provide more than 16 months training, resulting in the need to change OAR 436-120-0440. Another change is that a worker is entitled to a new, full-length training plan when the previous plan ended due to circumstances beyond the worker’s control. Although a worker can receive multiple training plans of up to 21 months each, a worker is limited to no more than a total of 21 months of time-loss benefits – for training purposes – during a claim.

Vocational assistance provider fee schedule and registry — OAR 436-120-0720 and 0800

As of Jan. 1, 2010, the highest fees vocational assistance providers can charge for their services are shown in the rules as percentages of the Oregon average weekly wage (updated automatically each July) rather than as dollar amounts. Dollar amounts are published in Bulletin 124 and will be adjusted annually. Also, although the division no longer must certify vocational assistance provider organizations, WCD will maintain a provider registry. Insurers are still required to provide services through a certified vocational counselor.

New counselor certification requirements — OAR 436-120-0820

The new rules require vocational rehabilitation counselors to demonstrate their knowledge of OAR 436-110 and OAR 436-120 by completing at least six hours of training in those rules every five years. Counselors also are required to complete at least eight hours of ethical practices training every five years — up from seven and a half hours.

The Employment Services Team will be providing training on OAR 436-105 (Employer-at-Injury Program), OAR 436-110 (Preferred Worker Program), and OAR 436-120 (Vocational Assistance to Injured Workers) throughout the year. The Employment Services Team also will provide videos of training presentations at no charge to vocational assistance providers who request them. For information on changes to the administrative rules (effective Jan. 1, 2010), please refer to “Focus on: Changes to the administrative rules” on page 5.

To find answers to questions we have received regarding the new rules, go to the Workers’ Compensation Division Web page, www.wcd.oregon.gov and click on Vocational Providers. ■

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Dear Benefits and Certification Unit

Frequently asked questions for the Benefits and Certification Unit

by the Benefits and Certification Unit staff

Question: What is the difference between temporary total disability (TTD) and temporary partial disability (TPD) benefits?

Answer: Temporary disability (TTD or TPD) benefits may be payable to the worker when his or her disability is characterized as temporary in nature. In general, the temporary disability time period encompasses the interim or open period for the initial claim, claim for aggravation, or when the worker is engaged in an authorized training program. The temporary disability time period ends when a Notice of Closure is issued.

Under ORS 656.210, temporary total disability is defined as total disability that is only temporary, meaning the worker's attending physician has restricted the worker from performing any type of employment duties. The worker is totally disabled for a temporary period of time.

Under ORS 656.212, temporary partial disability is defined as partial disability that is only temporary, meaning the worker's attending physician has released the worker to return to work with less than a regular work release. The worker is partially disabled because he or she is capable of performing some type of work, whether or not any work meeting his or her restriction is available.

Question: May I offset or prorate either temporary total disability or temporary partial disability benefits?

Answer: There are no provisions in the statute or administrative rules that allow an insurer to prorate temporary total disability benefits. Occasionally, a worker returns to work without receiving a work release from the attending physician who has authorized temporary total disability. If this occurs, you may prorate the worker's temporary disability benefits because the worker is working.

The insurer may prorate temporary partial disability benefits based on the worker's post-injury wage earnings or availability of work under certain circumstances. See OAR 436-060-0030.

Question: May I offset or prorate a worker's temporary partial disability benefits if they are receiving Social Security disability benefits?

Answer: No. ORS 656.212 allows the insurer to prorate a worker's temporary disability benefits when the worker has been released to return to modified work. The insurer must only use the worker's post-injury wage earnings to determine the amount of temporary partial disability due.

Wages are defined under ORS 656.005(29) as the money rate at which service rendered is paid under the wage earning agreement between the worker and the employer at the time of injury. Social Security disability benefits are not included in the definition of wages; therefore, they may not be used to prorate the worker's temporary disability benefits.

Question: May I offset or prorate a worker's temporary partial disability benefits if they are receiving unemployment benefits?

Answer: Yes. Wages are defined under ORS 656.005(29), and additional clarification is provided under OAR 436-060-0030(10). Post-injury wages include unemployment, sick, or vacation leave payments received.

The Benefits and Certification Unit responds to inquiries from workers, insurers, employers, medical providers, and attorneys.

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Who's Who in WCD

by Brian Light



Jody Howatt and Chris Hill are self-insurance specialists with the Compliance Section of the Workers' Compensation Division. As such, they are responsible for helping employers to obtain certification for self-insurance and monitoring self-insured employers for continued compliance with the rule and statute requirements regarding self-insurance in Oregon. Additionally, Jody and Chris are responsible for determining annual security deposit requirements for self-insured employers and self-insured employer groups, while conducting financial analysis of self-insured employers' annual financial statements to determine the employers' financial condition and ability to pay required benefits to injured workers.

Jody has been a self-insurance specialist for the past five and a half years and particularly enjoys the independent working environment, the diversity of her work, and the ability to assist the Compliance Section with issues surrounding employers and injured workers. Jody enjoys working with new businesses to Oregon and finds analyzing the financial status of corporations and their corporate structures to be interesting.

"It's a specialized program and I am often asked to explain the rules," said Jody. "It's satisfying to me when I can provide accurate information to satisfied parties."

When Jody is not analyzing financial statements, she likes to read, paint landscapes, golf, and spend time with her (almost grown) children. Jody enjoys traveling and has been taking many road trips lately, although if she is going to travel, she especially enjoys the tropics.



Jody Howatt,
self-insurance
specialist



Chris Hill,
self-insurance
specialist

Chris has been working alongside Jody for more than a year, joining WCD from his previous work with the Oregon Employment Department. Chris particularly enjoys helping self-insured employers navigate the laws and rules governing self-insurance in Oregon.

"No two self-insured employers are identical. They each run their businesses differently and approach risk management in different ways," he said.

"As a result, every issue I come across with a self-insured employer is influenced by unique circumstances and poses unique challenges."

When Chris isn't in the office, he enjoys golfing and fishing, "although not at the same time," he is quick to point out, unless you find him fishing his golf ball out of the pond at a nearby course. ■

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What's up on the Web?

by Amy Wadsworth



The Workers' Compensation Division's Web site has a lot of information. To help our customers find what they need, we've organized the top portion of the site by customer group. In this newsletter, we will spotlight the Employers Web page located at www.wcd.oregon.gov.

The Employers Web page has every resource we have to offer new and existing employers. These resources help employers understand their roles and responsibilities, as well as other helpful resources, to get them started in the right direction. We

know employers are busy, so the top link allows employers to subscribe to receive e-mail updates to this Web page. The rest of the Employers page is categorized by the following sections:

- Starting a new business
- Workers' compensation coverage
- Returning injured workers to work
- Workers' Benefit Fund assessment information (payroll)
- Claims process and responsibility
- Resources for employers

Our workers' compensation Coverage Section also has a link to a popular and helpful database to search for employer coverage and an online form to order additional Notice of Compliance posters.

The newest addition to the Employers page is the Employer Incentives News (an electronic newsletter) linked under the "Returning injured workers to work" section. This return-to-work news page is a perfect one-stop shop to quickly learn about our programs and how they can work for you.

As always, we want to hear from you. We want to know what you want and need on the Web, so that we can make improvements to best serve our customers. Contact our Web coordinator with your questions or ideas. ■

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Employer Incentive News:

New electronic newsletter for employers

by Jake Forrey

Over the past few months, the Workers' Compensation Division, the Information Management Division, and the Department of Consumer and Business Services Communications Section collaborated to develop a new electronic newsletter, *Employer Incentives News*, geared to employers and containing information about the Workers' Compensation Division's return-to-work programs.

The e-newsletter, which was launched in October, is free and available to all employers by subscription. It features articles describing benefits available through the Preferred Worker and Employer-at-Injury programs.

Subscribers receive quarterly updates, links to past articles, and division contact information about return-to-work programs. Employers who subscribe also automatically get periodic e-mails with direct links to new articles.

The division's rate notice, sent out to employers at the end of October 2009, included a short announcement about the new resource and included the address, www.OregonRTW.info, so employers know about the newsletter and have easy access to it.

If you have questions or want to subscribe to the newsletter, contact Jake Forrey at 503-947-7575 or e-mail jacob.p.forrey@state.or.us. ■

Workers' Compensation Division (WCD)

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Employer Incentives News

Get informed, stay informed


SAVE MONEY! You may qualify to receive financial incentives for re-hiring injured workers. Employer Incentives News provides an overview of benefits you can receive when you participate in Oregon's Return-to-work programs, including the Preferred Worker Program and the Employer-at-Injury Program. Through these programs you can receive financial benefits that increase your bottom line. The articles below highlight some of the incentives you can receive.

Sign up for the e-mail notification service to receive periodic Employer updates. To subscribe click [HERE](#).

Articles:

- [Show me the money!](#)
- [Critical News: Recent rule changes begin Jan. 1, 2010](#)
- [Why would I want to participate in worksite modification?](#)
- [Q&A: Oregon return-to-work programs](#)

Show me the money!



When was the last time you earned several thousand dollars for a few hours of your time? With the benefits available through the Preferred Worker Program, you can qualify to save thousands, and in some cases, even millions of dollars for hiring preferred workers! It doesn't take much time; it just depends on how rigorously you use the return-to-work programs.

Helpful Links:

- [Arou...](#)
- [empl...](#)
- [Retu...](#)
- [Post...](#)
- [Prefe...](#)
- [Cont...](#)

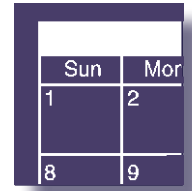
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State office closures and furlough days for state employees

by Ana Contreras



Tough economic times have severely reduced state revenues, forcing legislatures throughout the nation to make deep cuts in state budgets. Nearly half the states have found that temporary closures and unpaid furlough days are necessary ways to save money while preserving the important functions and services of state government. As part of its strategy to address its own budget cuts, Oregon's state government will close most agencies on eight Fridays in 2010 and 2011. The closures will require state employees to take mandatory unpaid furloughs on those days and will save about \$2 million a day statewide.

The Department of Consumer and Business Services, including the Workers' Compensation Division, will be closing its offices on the days listed below.

Please keep these dates in mind if you have information you will be submitting to the Workers' Compensation Division, because division employees will not be available to take phone calls or receive correspondence on office closure days. Also, hand-delivery will not be possible on these days. You can still mail, fax, or e-mail on office closure days. However, staff will not be available to respond until the next business day. If you are concerned about meeting a deadline because our office is closed on a state office closure day, please contact us to see if we can help on a case-by-case basis.

We regret any inconvenience these closure dates may cause; we will do everything possible to minimize disruption and hardship to those who rely on our services. ■

State Office closure dates	
2010	
Friday	March 19
Friday	April 16
Friday	June 18
Friday	Aug. 20
Friday	Sept. 17
Friday	Nov. 26
2011	
Friday	March 18
Friday	May 20

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New Management-Labor Advisory Committee member: Pam Ruona

by Cara Filsinger



Gov. Ted Kulongoski has appointed Pam Ruona as the new management member to the Management-Labor Advisory Committee (MLAC). The Senate confirmed Pam on Oct. 1, 2009, and her appointment was effective Nov. 1, 2009.

Pam is the director of Policy and Programs for Oregon Healthcare Association (OHCA). The OHCA represents more than 620 nursing homes; assisted living, residential care, and senior housing facilities; in-home care agencies; and long-term care corporate offices. Pam's focus for OHCA is workforce issues, including workplace safety. Pam has also worked for the North Dakota Workers' Compensation Bureau and as an investigator for the Oregon Insurance Division. Pam fills the position vacated by Linda Barno.

As part of the workers' compensation system reform in 1990, the Oregon Legislature created MLAC as an advisory committee. The committee consists of five business representatives and five labor representatives, with the DCBS director serving as an ex-officio member. The law charges the committee to study issues affecting the workers' compensation system, to advise the director, and to report its findings and recommendations to the Oregon Legislature. ■

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Processing a claim upon the death of a worker

by Ana Contreras

Effective Jan. 1, 2010, Senate Bill 110 made several changes to the benefits available when a worker dies as a result of a job-related injury or illness. Some of the changes made by SB 110 include:

- Increases to the funeral and final disposition benefit for deceased workers, with any unpaid balance being paid to the worker's estate.
- Increases to the benefit for a surviving child, with no parents, that attends higher education.
- Changing the payment requirements of unpaid permanent partial disability benefits when there is no surviving beneficiary.

A new rule also took effect Jan. 1, 2010, providing direction to insurers regarding what notices and correspondence are applicable following the death of a worker. OAR 436-060-0012 provides:

- (1) If a worker is deceased, regardless of the cause of death, an insurer must address all future notices and correspondence to the worker's estate or qualified beneficiaries.
- (2) If a worker is deceased, regardless of the cause of death, an insurer must still provide a written notice of acceptance or denial of a claim and issue a Notice of Closure, when applicable, to the estate of the worker.
- (3) Other notices intended only for the worker are not required when the worker is deceased.

Clear communication is extremely important for family members and employers because of the sensitive nature of these claims. Therefore, the Workers' Compensation Division has developed a Web page, www.cbs.state.or.us/wcd/communications/110.html, with helpful tips we've gathered from working with the industry for processing fatal claims.

These suggestions are intended to help insurers process fatality claims; however, they are not a substitute for following the requirements of statute and rules. Our hope in providing this information on a consolidated Web page is that it will provide insurers with a quick reference when faced with processing these difficult claims. When new questions arise, we will update the Web page. ■

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WCD helps sort out confusion over employee vs. independent contractor

by Mark Peterson

The Workers' Compensation Division has taken an integral role in the development of new tools to help businesses and workers understand the differences between an employee and an independent contractor.

Properly classifying workers is important in workers' compensation and other areas such as taxes. There has been some confusion in the past regarding the differences. Prior to 2005, ORS 670.600 stated that to be considered an independent contractor, a person must be free from direction and meet four of six listed criteria. Because the law was unclear, the 2005 Oregon Legislature modified independent contractor statutes.

These statutes, which took effect Jan. 1, 2006, had an impact on the Workers' Compensation Division, Oregon Department of Revenue, Employment Department, Construction Contractors Board, and Landscape Contractors Board. Representatives from these agencies were charged with educating the public on the new law changes. Linda Repp, senior investigator in the Employer Compliance Unit in the Workers' Compensation Division, served on the independent contractor committee to educate the public.

Some examples of the differences between an independent contractor and an employee are as follows: An independent contractor is free from direction and control, does tasks in his or her own way, and has necessary skills and training to complete the job; for an employee, the means and manner of work are controlled by the employer, he or she does tasks the employer's way, and is trained by the employer to do the job.

Misclassification can be potentially harmful for workers for many reasons, including a worker may miss out on lawful benefits if not properly classified; independent contractors are not covered by workers' compensation insurance and are not entitled to coverage for their injuries; and the law does not give independent contractors the same rights and coverage provided to employees.

Depending on the situation, employers that misclassify workers may be assessed back taxes, penalties, and interest. In an effort to avoid this and to provide useful information, the committee created a new Oregon Independent Contractors Web site. The committee also coordinated a new online informational video, which you can view at <http://www.oregon.gov/IC/multimedia/ICVideo/ICEMediaShell.html>.

"The video is a great learning tool for understanding the complexity of the independent contractor law, how it is interpreted, and, finally, the cost of misclassifying your workers," Linda said.

Another educational tool the committee created was a general information brochure titled, "Employee or Independent Contractor?" that was distributed to the appropriate agencies to post on their Web sites and to distribute to interested parties. ■

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How “rock solid” are notices of closure?

Insurers and self-insured employers are responsible for ensuring that claim closures are timely and proper. WCD’s Appellate Review Unit (ARU) has been concerned that a significant number of Notices of Closures (NOCs) appealed to reconsideration are rescinded.

To put the number of rescinded NOCs in perspective, between Sept. 1, 2008, and Aug. 31, 2009, nearly 21,000 disabling claim closures were reported to WCD. About 3,500 were appealed to ARU for reconsideration. ARU rescinded the NOC in about 17 percent of those 3,500 reconsideration requests.

ARU recently completed a detailed file review of more than 650 rescissions to determine why so many NOCs were rescinded. The review found that there are common errors in the closures and often more than one.

The top three reasons (in descending order) for rescinding a NOC are:

- Incomplete closing reports. This was a reason in 47 percent of the cases reviewed and, in another 8 percent of the cases reviewed, this reason was combined with another reason such as “no/incomplete records” or “no closing report.”

- Errors in determining medically stationary status. The problem often was properly identifying the attending health care provider or physician – AP – for purposes of determining the medically stationary date.
- Errors in processing and notification when claims were closed “administratively.” For example, errors occurred in the wording and timing of a warning letter when the worker didn’t seek treatment without approval of the attending physician.

A claim closed improperly will be rescinded at reconsideration, so attention to detail during claim processing can save time and money. In general, we think the likelihood of rescission would decline through:

- Reviewing the file thoroughly.
- Following up with the appropriate health care providers on any questionable or unclear statements or findings.
- Resolving omissions or inconsistencies so the basis for closure or rating decisions is clear.

ARU welcomes inquiries about individual insurer statistics and is available to provide training adapted to specific requests or needs. To contact the unit, call 503-947-7816. ■



Visit us on the Web

You can find the Oregon Workers’ Compensation Division on the Web at www.wcd.oregon.gov.



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Worksite modification, *continued from page 8*

sheets, and providing an ergonomic chair. Carothers & Son invested time and effort in the cleanup and setup of a vacant paint shop to allow the burn table to be relocated from the fabrication shop. Moving the burn table to the vacated paint shop proved invaluable in unexpected ways. John said not only is the new space the perfect size for the table and crane, but it is cleaner and quieter. The crane-hoist combination allows John to lift the steel sheets and position them on the burn table with minimal force. Finally, the new ergonomic chair allows John to sit comfortably at his computer station.

Employer Rick Boatwright was thrilled with his PWP experience and the completed modification. He described his experience with the worksite modification process as efficient, timely, with no waste, and no bureaucracy.

"It was great to experience my tax dollars being spent wisely," he said.

John said that even though he was skeptical at first, the modification could not have turned out any better.

"My life is easier and less stressful," said John. "The program is truly a value for the employer, the worker, and the state. Now, I can go home after work and enjoy playing with my 10-year-old and 4-year-old without being in severe pain and grumpy because my back pain is much less." ■

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