



Oregon

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To: Workers' Compensation Insurers, Self-insured Employers, Service Companies,
Vocational Rehabilitation Organizations, Interested Parties

Subject: Employer-at-Injury Program (EAIP)

In response to customer and stakeholder input, WCD has completed a review of administrative rule interpretations and policies regarding the EAIP.

This notice explains specific issues where rule clarification was needed, the new WCD policy regarding each issue, and examples to illustrate them. It also explains how WCD will implement the policies. **This new policy, which supersedes all prior communications, will be applied immediately and will be in effect until the effective date of the new administrative rules.**

Wage Subsidy Start Date

Issue: Whether the wage subsidy can start on a worker's paid leave day.

Policy: The rules leave the timing of the Program to the employer and insurer. OAR 436-110-0005(10) provides that paid leave is part of a worker's wages. OAR 436-110-0540(5) requires that the wages subject to reimbursement must have actually been paid to the worker. The question is not whether the EAIP started on a paid leave day, but whether the worker was actually paid for a leave day. Therefore, a wage subsidy reimbursement that begins or includes paid leave time is allowable.

Example: A worker is released to modified work with restrictions. Prior to beginning the modified job, the worker takes vacation or holiday leave. The wage subsidy period may begin prior to the worker beginning modified work.

Substantial Modification

Issue A: Whether the definition of "regular employment," which includes the language "substantially similar," is applicable to EAIP cases.

Policy: If a worker returns to the same position held prior to qualification for the EAIP, but modifications have been made that allow the worker to perform the job within the medical restrictions and/or limitations, then the position meets the criteria and eligibility requirements. The deciding factor should be whether the modified position meets the medical restrictions

and/or limitations, and not the language “substantially similar” as stated in the definition of “regular employment.”

Example: A worker’s regular job requires occasional typing (even less than 1%). The worker is released to work and can perform all duties except typing. If the worker returns to work and performs all duties except typing, the employer is eligible for EAIP reimbursement.

Issue B: Whether a worker’s regular work must be substantially modified to qualify for EAIP.

Policy: The rules require modified work conform to the medical restrictions and/or limitations placed on the worker by the medical service provider. There is nothing in the rules that specify a certain “amount” of modification that must occur before the early-return-to-work position qualifies for the program. If any restriction and/or limitation is placed on a worker and the employer provides a position that meets those restrictions and/or limitations, then it qualifies under the program. WCD has not established a minimum percentage of modification before it allows reimbursement. The only requirement is that the modified position meet the medical restrictions.

Continuous Releases

Issue: Whether reimbursement should be allowed when a medical provider authorizes a release to modified work and the worker either never returns for a follow-up exam or the follow-up exam is after an extended period of time.

Policy: WCD has allowed the EAIP for the specified duration of the original release to modified work, ending the EAIP when the worker failed to follow-up as directed, or the specific duration expired. If the modified release did not provide an end date or dictate a follow-up appointment (open-ended release), WCD has allowed the entire EAIP period. WCD’s interpretation is reasonable. However, the rules are not completely clear. The rules could be interpreted to allow the EAIP to continue until the date of the release to regular work. A release to regular work cannot be inferred. It must be specifically cited by a medical service provider. WCD will change the policy so that an EAIP period could extend until one of the reasons cited in OAR 436-110-0540(7) occurs. OAR 436-110-0540(7) states “[t]he insurer shall end the [EAIP] when the worker’s claim is closed, the worker is released for full-duty regular employment, or the worker has returned to other work which is not part of the employer’s early-return-to-work program, whichever occurs first.”

Examples: A worker cuts his/her finger and seeks treatment. The worker is released with restrictions to limit the use of the hand for one week and to follow-up with the physician for suture removal. The worker fails to return to a physician and is, therefore, never released to regular work by a physician. Previous WCD policy would allow a one week EAIP period. Under the new policy, the employer will be eligible for EAIP reimbursement until one of the conditions cited in OAR 436-110-0540(7) mandates earlier termination.

A worker is released to modified work with no specified duration, only instructions to follow-up in two weeks. The worker fails to follow-up in two weeks, but does attend a closing exam nine months later and is released to regular work. Previous WCD policy would allow a two week EAIP period. Under the new policy, the employer will be eligible for EAIP reimbursement until conditions cited in OAR 436-110-0540(7) mandate program termination.

Rescinded Releases

Issue A: Whether a rescinded release to regular work must have originally specified that the release was a “trial” of regular work.

Policy: OAR 436-110-0520(2)(b) provides that a worker is eligible for EAIP provided that he/she has not returned to regular employment under the most recent claim opening except when there is a release to regular work which is subsequently rescinded. The rule does not require that the original release to work state it is a “trial” release. Therefore, WCD would allow reimbursement.

Issue B: Whether a rescinded release to regular work stops or stays program and wage subsidy benefits.

Policy: Current WCD practice permits reimbursement in the form of wage subsidy from the time of program eligibility to the date of the release to regular work, and after the date the release to regular work is rescinded. Some users have argued that they should also receive wage reimbursement for the regular work period. However, OAR 436-110-0540(7) supports WCD’s current practice and the interim period of regular work would be disallowed.

Example: The worker is released and performs modified work for two weeks. The physician then releases the worker to regular work and the worker performs regular work for a six-week period. The physician then releases the worker back to modified duty, then issues another regular release two weeks later. The employer will be eligible for the first two weeks and the last two weeks for EAIP reimbursement, but not the interim six-week period.

Medical Restriction Requirements

Issue A: Whether restrictions and/or limitations within a medical release must be more specific than “light work” or “light duty.”

Policy: It is necessary that any release to modified work contain specific restrictions and/or limitations because an early-return-to-work position must be established that meets the medical restrictions and/or limitations of a worker. Otherwise, it is unclear how any job would qualify for the program. WCD will continue to disallow reimbursements when no specific medical restrictions and/or limitations are stated by the medical service provider. It is the duty of the insurer to get this information when developing an early-return-to-work position and it’s job description.

Issue B: Whether after-the-fact clarifications, particularly of medical restrictions, are permissible.

Policy: For an insurer/employer to establish an early-return-to-work position that meets the medical restrictions and/or limitations of work, the medical restrictions and/or limitations must be known at the time the position is established. An auditor may document that the procedural requirement is waived based on after-the-fact clarification of medical restrictions and/or limitations and approve the reimbursement when appropriate.

Conflicting Documentation

Issue: When conflicting documentation exists within the file documentation, which documentation controls, and should reimbursement be allowed?

Policy: The issue presents a standard of evidence issue that requires finding some documentation more persuasive than other documentation. On a case-by-case situation, WCD utilizes a preponderance of evidence standard to decide eligibility for reimbursement. If there is doubt or no clear preponderance, then reimbursement will be allowed.

Example: Documentation of a phone conversation with the worker indicates that the worker has returned to regular work. Employer notes that worker is performing modified work. No other documentation supports either position. Reimbursement would be allowed. If other documentation exists and the preponderance of evidence supports that the worker was working regular work, reimbursement would be disallowed.

Exceeding Hourly Restrictions

Issue: Whether reimbursement is allowed when wage subsidy payroll records indicate that a worker has exceeded the hourly restriction made by the physician.

Policy: The only requirement for an early-return-to-work position is that it meets the medical restrictions and/or limitations. If the early-return-to-work position meets the restrictions and/or limitations, the position qualifies under the EAIP. OAR 436-110-0540(7) states that “[the insurer shall end the [EAIP] when the worker’s claim is closed, the worker is released for full-duty regular employment, or the worker has returned to other work which is not part of the employer’s early-return-to-work program.

When a worker exceeds an hourly restriction cited by a physician, the position no longer meets the requirements of an early-return-to-work position. If the early-return-to-work requirements are not met, the position has exceeded the early-return-to-work program. Therefore, reimbursement for the period the worker exceeded the hourly restriction would not be allowed beyond the last day the worker met the hourly restrictions. However, if the physician changed the release to modified work (the insurer’s documentation should support the change and the number of hours worked), the position would meet the requirements and the reimbursement should be allowed.

Example: The worker is released to modified work but specifically limited to four hours per day. The worker's regular shift was eight hours per day. Once the worker begins to exceed four hours per day, the wage subsidy and EAIP ends.

Payroll Records

Issue: Whether WCD may disallow a wage subsidy reimbursement when the employer's payroll records do not break down a worker's payment history.

Policy: OAR 436-110-0540(5) requires that the "[w]ages subject to reimbursement must have been paid the worker." OAR 436-110-0540(1)(b) requires the insurer to keep documentation consisting of "[a] copy of the worker's payroll records for the wage subsidy period. Payroll records shall state the dates (daily), hours, wage rate and the worker's gross wages for the wage subsidy period. Payroll records shall be a legible copy and compiled in accordance with generally accepted accounting procedures." OAR 436-110-0540(8) requires that "[t]he insurer must receive all insurer-required documentation for reimbursement from the employer within one year of the end of the EAIP in order to qualify for reimbursement. The insurer shall date stamp each reimbursement request support document with the receipt date."

WCD must adhere to the above-stated standards. The payroll records must be broken down to include the dates, hours (including overtime), wage rate, and the worker's gross wages for the wage subsidy period. The records must meet generally accepted accounting procedures. If these requirements are not met, the wage subsidy will be disallowed. An affidavit or certified statement alleging compliance does not meet the requirements.

Examples: Insurer/employer receives a reimbursement for a wage subsidy. If, at audit, the required documentation is not available to determine wages earned during the wage subsidy period, reimbursement will be disallowed. The insurer/employer providing an affidavit stating that the reimbursed amount is true and correct would not be sufficient to allow reimbursement.

The employer's payroll is documented on a semi-monthly cycle such as January 1 through January 15 and January 16 through January 31. The wage subsidy period is January 4 through 19. Documentation of dates, hours, wage rate, etc., may be provided separate from the official payroll, as long as the official payroll is also available and does not contradict the EAIP breakdown. The breakdown documentation is necessary to accurately request EAIP reimbursement and must be available to support the reimbursement at audit.

Purchase of Tools and Equipment

Issue: Whether EAIP reimbursement should be allowed for purchases of tools and equipment when the use of such items exceeds the worker's medical restrictions. Also stated, whether EAIP purchases for tools and equipment must be compatible with a worker's medical restrictions.

Policy: Current WCD practice disallows reimbursement when the use of a tool or equipment exceeds a worker's medical restrictions. OAR 436-110-0540(11) supports the current practice and WCD will utilize a preponderance of evidence standard to decide each reimbursement. If no

clear preponderance of evidence exists to disallow reimbursement, the reimbursement will be allowed.

Example: Worker is released to modified work with a lifting restriction of no more than 25 pounds. The employer established an early-return-to-work position that meets the requirements. The employer submits a request for a chainsaw that weighs 50 pounds. In all other respects, the position meets the medical restrictions, except that the physical use of the chainsaw exceeds the restrictions. Reimbursement for the chainsaw would be disallowed.

Implementation of the New Policy

In order to apply the new policy, the audit cycles are categorized as follows:

Completed audits	1997 and 1998;
Interim audits	1999 and 2000 (not yet audited, under current rules).

WCD will allow clemency for completed and interim audits. As applied by this policy, clemency means:

- a) For completed audits, adjusting reimbursements that were not audited to this policy; and
- b) For interim audits, allowing insurers an extended period of time to adjust and/or amend reimbursement requests to the new policy.

WCD will take the following steps to implement the new policy:

- ◆ WCD will review all audit referrals for the completed period for reimbursements that were disallowed. This measure will encompass disallowed reimbursements appealed by insurers, as well as those that were not appealed;
- ◆ From January 1 through June 30, 2001, WCD will allow insurers/employers to amend any requests for the interim period to conform to the adoption of the new policy regarding reimbursements. Example: An injured worker is released to modified work for five days and doesn't return to a medical provider. If the insurer only requested a five day EAIP and/or wage subsidy period, it would be allowed to amend the request to include additional days up to mandatory program termination pursuant to OAR 436-110-0540(7);
- ◆ The interim period will be audited in accordance with this policy;
- ◆ WCD will resume the rules process and will provide clarification in the new rules consistent with the intent of the EAIP; and
- ◆ WCD will initiate a limited duration pilot project with public employers who wish a review of EAIP requests and documentation prior to reimbursement. Data from the project will be used to

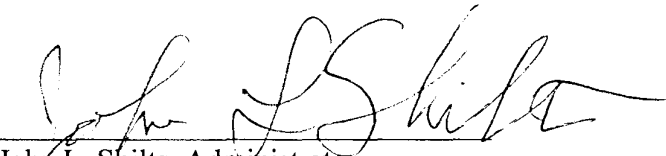
determine whether this approach is effective and feasible. More information will be provided to this group as soon as possible.

◆ WCD will communicate the details regarding the review and amendment of reimbursements under separate cover when they have been determined.

Again, please note that these policies will be in effect for the EAIP reimbursements that are subject to OAR 436-110 effective September 12, 1997, as outlined above. Once new administrative rules are in effect, these policies will no longer be in effect. WCD projects the proposed rules will be filed January 15, 2001.

Program-related questions should be directed to:
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Audit-related questions should be directed to:
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