

BEFORE THE WORKERS' COMPENSATION BOARD OF  
THE STATE OF OREGON

Adoption of Permanent Amendments to the	)	
Rules of Practice and Procedure for Contested	)	WCB ADMIN. ORDER 22-2022
Cases under the Workers' Compensation Law,	)	
Relating to Updating the Board's Email Address	)	
for Filing Requests for Hearing and Board	)	
Review (OAR 438-005-0046) and the Board's	)	
"Email Request" Address Including in the	)	
Mandatory Language for Notices of Acceptance	)	
and Denial (OAR 438-005-0050,	)	
OAR 438-005-0055); Updating Rules Pursuant	)	
to the Name Change of the Ombuds Office for	)	
Oregon Workers (OAR 438-005-0055,	)	
OAR 438-007-0020, OAR 438-009-0010,	)	
OAR 438-009-0022).	)	ORDER OF ADOPTION

1. On April 6, 2022, the Workers' Compensation Board filed a Notice of Proposed Rulemaking Hearing with the Secretary of State, giving notice of its intent to adopt and amend permanent rules of practice and procedure relating to the aforementioned rules. On April 8, 2022, notice of this hearing was posted on the Board's website at <http://www.oregon.gov/wcb/legal/Pages/laws-and-rules.aspx>.

On April 19, 2022, copies of the notice and proposed rules were mailed to all interested parties whose names appear on the Board's mailing list. On April 19, 2022, notice of the proposed rulemaking was electronically provided to the appropriate legislators. Copies of the notice were also electronically provided to the *Oregonian*, the *Associated Press*, and the *Capitol Press* on April 19, 2022.

In addition, notice of the hearing was published in the March 2022 issue of the Board's News and Case Notes, which was posted on the Board's website in early April 2022. Members of the Workers' Compensation Section of the Oregon State Bar received notice of this hearing on April 15, 2022, when the Board's News and Case Notes was electronically distributed to them.

Thereafter, in accordance with the notice, a telephonic public hearing was conducted by Robert Pardington, the rulemaking hearing officer, on May 27, 2022, at Salem, Oregon. The record of the public hearing was closed at 11:59 p.m. on May 27, 2022.

2. One individual offered comment at the hearing. The individual was an attorney from the SAIF Corporation. One written comment was received consisting of the Board's Administrative Rules Coordinator's April 19, 2022, "Statement of Filing/Notice of Procedures" regarding the aforementioned rules. Copies of the transcript of the public hearing and the written comment have been posted on the Board's website at <https://www.oregon.gov/wcb/legal/Pages/laws-and-rules.aspx> and are available for public inspection and copying at the offices of the Board, 2601 25th St. SE, Suite 150, Salem, Oregon 97302-1280, from 8 a.m. to 5 p.m., Monday through Friday. Any questions regarding this material may be directed to Katy Gunville, the Board's Administrative Rules Coordinator, at (503)934-0123.

3. Order of Adoption for Rules. The Board has proposed the amendment of its permanent rules to address the change in the Board's email addresses (from "@oregon.gov" to "@wcb.oregon.gov"). The proposed amendments update the Board's email address for filing requests for hearing and Board review and the "email request" address included in the mandatory language for notices of acceptance and denial. Additionally, the office of the Ombudsman for Injured Workers has changed its name to the Ombuds Office for Oregon Workers. In response, the Board proposed amending its permanent rules to replace references to the Ombudsman for Injured Workers with the Ombuds Office for Oregon Workers. These proposed amendments will also affect the mandatory language for notices of acceptance and denial, as well as the mandatory language for subpoenas for individually identifiable health information, Disputed Claim Settlements, and Claim Disposition Agreements.

A public hearing regarding the proposed rules was held on May 27, 2022. At the hearing, one written comment and one oral comment were received into the record.

At their June 30, 2022, public meeting, the Members thoroughly reviewed and considered the public record developed regarding the proposed permanent rules. The Members also considered the public comments presented at the hearing. A written summary of the comments, prepared by the rulemaking hearing officer, is also included in the record. After completing its review and consideration of the comments and summary, the Board has reached the following conclusions regarding the proposed rules.<sup>1</sup>

#### OAR 438-005-0046(1)(f)(A)

The Board's email filing rule, OAR 438-005-0046(1)(f)(A), provides that email requests for hearing and Board review (in addition to other requests listed in OAR 438-005-0046(1)(e)) must be sent to "request.wcb@oregon.gov," the Board's previous email address. To update that rule to be consistent with the Board's new email addresses, the Board proposed that the rule be amended to replace "request.wcb@oregon.gov" with "request.wcb@wcb.oregon.gov."

At the rulemaking hearing, no comments were received regarding this proposed amendment.

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<sup>1</sup> Member Woodford participated in proposing the permanent rule amendments and signed the April 6, 2022, Statement of Need and Fiscal Impact concerning those amendments. However, because she is no longer a member of the Board, she was not involved in the adoption of the proposed rules.

The Members find, for the reasons expressed in the Statement of Need, and those discussed herein, that the proposed amendment to OAR 438-005-0046(1)(f)(A) is reasonable, necessary, and proper. Accordingly, the Board adopts this proposed rule, contained in Exhibit A and incorporated by this reference.

OAR 438-005-0050(2)

The Board's previous email request address is contained in the language that must be included in the Notice of Acceptance and Hearing Rights pursuant to OAR 438-005-0050(2). Accordingly, the Board proposed to amend this rule to replace the reference to "request.wcb@oregon.gov," the Board's previous email request address, with "request.wcb@wcb.oregon.gov," the Board's new email request address.

In addition, the mandatory language for a Notice of Acceptance and Hearing Rights outlined in OAR 438-005-0050(2) contains a reference to the "Ombudsman for Injured Workers." To reflect the name change of that office, the Board proposed to replace the reference to the "Ombudsman for Injured Workers" with "the Ombuds Office for Oregon Workers."

At the rulemaking hearing, no comments were received regarding these proposed amendments.

After further considering the matter, the Members find, for the reason expressed in the Statement of Need and those discussed herein, that the proposed amendments are reasonable, necessary, and proper. Thus, the Board adopts this proposed rule, contained in Exhibit B and incorporated by reference.

OAR 438-005-0055(1), (2)

The Board's previous email request address is contained in the language that must be included in the Notice of Claim Denial and Hearing Rights pursuant to OAR 438-005-0055(1) and (2). Accordingly, the Board proposed to amend subsections (1) and (2) of OAR 438-005-0055 to replace the references to "request.wcb@oregon.gov" with "request.wcb@wcb.oregon.gov."

Further, the mandatory language for the Notice of Claim Denial and Hearing Rights outlined in OAR 438-005-0055(1) and (2) includes a reference to the "Ombudsman for Injured Workers." Accordingly, the Board proposed replacing that reference with the "Ombuds Office for Oregon Workers."

At the rulemaking hearing, no comments were received regarding these proposed amendments.

After further considering the matter, the Members find, for the reasons expressed in the Statement of Need and those discussed herein, that the proposed amendments are reasonable,

necessary, and proper. Thus, the Board adopts this proposed rule, contained in Exhibit C and incorporated by reference.

OAR 438-007-0020(6)(b)

The mandatory language for a subpoena for individually identifiable health information outlined in OAR 438-007-0020(6)(b) contains a reference to the “Ombudsman for Injured Workers.” Accordingly, to reflect the name change of that office, the Board proposed replacing the reference to the “Ombudsman for Injured Workers” with the “Ombuds Office for Oregon Workers.”

At the rulemaking hearing, no comments were received regarding this proposed amendment.

After further considering the matter, the Members find, for the reason expressed in the Statement of Need and those discussed herein, that the proposed amendment is reasonable, necessary, and proper. Thus, the Board adopts this proposed rule, contained in Exhibit D and incorporated by reference.

OAR 438-009-0010(5)(b)

OAR 438-009-0010(5)(b), which concerns required language for Disputed Claim Settlements involving unrepresented claimants, references “the office of the Ombudsman.” Accordingly, to reflect the name change of that office, the Board proposed replacing the reference to “the office of the Ombudsman” with “the Ombuds Office for Oregon Workers.”

No comments were received at the rulemaking hearing regarding this proposed amendment.

After further considering this matter, the Members find, for the reasons expressed in the statement of need and those discussed herein, that the proposed amendment is reasonable, necessary, and proper. Thus, the Board adopts this proposed rule, contained in Exhibit E and incorporated by reference.

OAR 438-009-0022(4)(h)

The notice that must be included or incorporated by reference in a Claim Disposition Agreement pursuant to OAR 438-009-0022(4)(h) includes references to the “Ombudsman for Injured Workers” and the “Ombudsman.” Accordingly, the Board proposed to replace those references with references to the “Ombuds Office for Oregon Workers” and the “Ombuds Office.”

No comments were received at the rulemaking hearing regarding these proposed amendments.

After further considering the matter, the Members find, for the reasons expressed in the statement of need and those discussed herein, that the proposed amendments are reasonable, necessary, and proper. Thus, the Board adopts this proposed rule, contained in Exhibit F and incorporated by reference.

4. Under the authority granted by ORS 656.726(5), the Board finds that:
  - a. All applicable rulemaking procedures have been followed; and
  - b. The rules being adopted are reasonable, necessary, and proper.

**PURSUANT TO THE AMERICANS WITH DISABILITIES ACT GUIDELINES, ALTERNATIVE FORMAT COPIES OF THE RULES WILL BE MADE AVAILABLE TO QUALIFIED INDIVIDUALS UPON REQUEST TO THE BOARD.**

Consequently, in accordance with its Notice of Proposed Rulemaking, the Board adopts the attached amendments, as set forth in Exhibits A through F, incorporated herein by reference as permanent rules of the Workers' Compensation Board, to become effective October 1, 2022.<sup>2</sup> These amendments are applicable as follows:

The amendment to OAR 438-005-0046(1)(f)(A) applies to all email requests listed in OAR 438-005-0046(1)(e), including requests for hearing and Board review, filed on or after October 1, 2022.

The amendments to OAR 438-005-0050 apply to all Notices of Acceptance and Hearing Rights issued on or after October 1, 2022.

The amendments to OAR 438-005-0055 apply to all Notices of Claim Denial and Hearing Rights issued on or after October 1, 2022.

The amendment to OAR 438-007-0020 applies to subpoenas for individually identifiable health information issued on or after October 1, 2022.

The amendment to OAR 438-009-0010 applies to Disputed Claim Settlements which are signed by all parties on or after October 1, 2022.

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<sup>2</sup> In proposing the permanent rule amendments, the Board specifically sought public comment on the effective date of those amendments affecting the mandatory language contained in notices of acceptance and denial and in Disputed Claim Settlements and Claim Disposition Agreements. At the May 27, 2022, rulemaking hearing, a trial attorney from SAIF requested that the Board make the proposed rule amendments effective 120 days from the date of the May 27 rulemaking hearing to give carriers the opportunity to adjust their forms and computer systems in response to the rule changes. After conducting their review and deliberation at the June 30, 2022, public meeting, the Members agreed that the proposed permanent rule amendments will have an effective date of October 1, 2022.

The amendments to OAR 438-009-0022 apply to Claim Disposition Agreements which are signed by all parties on or after October 1, 2022.

The Board further orders that a certified copy of the amended rules be filed with the Secretary of State as required by ORS 183.355.

Dated this 11 day of July, 2022.

**WORKERS' COMPENSATION BOARD**

by:

  
Constance L. Wold, Board Chair

  
Sally Anne Curey, Board Member

  
Roger Ousey, Board Member

  
Moisés R. Ceja, Board Member