

Presiding Officer's Report to Agency on Rulemaking Hearing

Date: February 15, 2023
To: David Gerstenfeld, Acting Director
From: Anne Friend, OED Rules Coordinator
Subject: Presiding Officer's Report on Rulemaking Hearing – Paid Leave Oregon Batch 6 Rules

Public Hearings and Public Comment Period

Meeting Type	Hearing Date and Time	Hearing Location
Public Hearing	January 17, 2023 – 10 am - Noon	Virtual via Zoom
Public Hearing	January 23, 2023 – 2 – 4 pm	Virtual via Zoom
Public Comment Period	January 1, 2023 to January 31, 2023 at 11:59 pm	Submitted in writing via email.

Notice Filings (OAR 471-070-*)

Notice Number	Rule Numbers
Notice – Employer Size & Department Representation	471-070-3150, 3160, 8000

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Hearings Report

There were two rulemaking hearings on the proposed rules for the Paid Leave Oregon Division’s Batch 6 administrative rules related to employer size and department representation. The Notice of Proposed Rulemaking was filed with the Secretary of State’s Office on December 21, 2022. All hearings were held virtually via the Zoom platform and recorded for the official record. Below, is a summary of each hearing and a summary of any comments received on the draft administrative rules related to employer size or department representation. The public comment period for this rulemaking effort was opened on January 1, 2023, and closed at 11:59 p.m. on January 31, 2023. This report covers only those comments related to the three administrative rules.

Public Hearing #1 – January 17, 2023

The first public hearing for the proposed administrative rules took place on Tuesday, January 17, from 10 a.m. - noon. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 197 individuals registered to attend and 125 actually attended the hearing. Of the attendees, no attendees provided testimony during the hearing on the proposed administrative rules. There were 29 different general questions asked about the program not specific to the proposed administrative rules and those questions are not included in this report.

Public Hearing #2 – January 23, 2023

The second public hearing for the proposed administrative rules took place on Monday, January 23, 2023 from 2 – 4 p.m. The hearing occurred through Zoom and was recorded as part of the official record. Participants put their name in the Q & A or raised their hands within the Zoom meeting to comment on the proposed rules. There were 139 individuals registered to attend and 63 actually attended the hearing. Of the attendees, one attendee provided testimony during the hearing on the draft administrative rules. A summary and corresponding written testimony of the comment on the proposed administrative rules can be found in the table below and in Exhibit 05 attached.

Public Comment Period – January 1 – 31, 2023

The Notice of Proposed Rulemaking including Statement of Need and Fiscal Impact filing for the Batch 6 administrative rules was published in the Oregon Bulletin on January 1, 2023. Between January 1 and 11:59 p.m. on January 31, 2023, the public comment period was open for the public, interested parties and groups, and legislators to submit comments on the draft administrative rules. Comments and questions were primarily received via the Rules@employ.oregon.gov email box. Any comments received regarding the Paid Leave Oregon Batch 6 administrative rules in other email boxes were subsequently forwarded to the Rules email box and recorded.

During the public comment period, the Department received written testimony from 15 different individuals or groups. Summary of the testimony received specifically regarding Paid Leave Oregon Batch 6 administrative rules related to employer size and department representation can be found in the table below under the rule(s) the testimony was provided for, the exact comments can be found in the attached exhibits.

Summary of Comments Received on and Responses for Paid Leave Oregon Batch 6 Administrative Rules

Comments related to proposed rules:

Rule Number	Name Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
471-070-3150 – Employer Size: Definitions	Emily Marsh, National Association of Professional Employer Organization (NAPEO); Michael Kreiter, Insperity; Catherine Harper, Lyons HR; Anthony Kell, Professional Business Solutions, Inc. (PBSI); Anne Donovan, NAPEO Leadership Council Chair	05; 03; 04; 07; 16	(1) – Oppose as propose expanding the definition to include “for purposes of determining employee count, clients of a worker leasing company as defined in ORS 656.850 may be counted at the client level.” This will allow worker leasing companies (co-employers, Professional Employer Organizations, or PEOs) and their clients to qualify as small employer, for grants, or for equivalent plans.	Per ORS 657B.150(12)(a) employers shall make and file combined quarterly report of wages and contributions. Because the quarterly filing occurs at the PEO level, the employer count is also determined at the PEO co-employer level. This aligns with Unemployment Insurance, Oregon income tax withholding, and other programs on the quarterly report. PEO’s can set up separate BINs to group equivalent plan individual businesses in one, small individual businesses in another, and large individual businesses in a third.	No
	Tom Ames, Liberty Tax Service	08	(1) – Oppose as propose including a provision to not count employees who work under a certain number of hours or who quit or leave.	ORS 657B.360(1) requires the employee count to be determined by the average number of employees employed by the employer. It doesn’t allow for exclusion for employees that only	No

				work certain number of hours.	
	Ann Griffith, KT Consulting Co Inc.	09	(1) – Oppose as the employee count should only include Oregon employees. Counting all employees doesn't fairly represent whether a company is a small or large company.	Including all employees represents the true size of the business.	No
	Abby Patel, La Quinta by Wyndham Portland NW; Jenna Walden, Anjou Spa; Andy McAnally, Mac's Bar & Grill, Big John's Pizza, Dave's Chevron & Food Mart, Pendleton Whisky Music Fest; Lisa Parker, Prineville Coffee Co	11; 12; 13; 15	(1) – Oppose as employee count should be FTE and not headcount.	ORS 657B.360(1) requires the employee count to be determined by the average number of employees employed by the employer. Counting by FTE would difficult for employers to count and employment department to verify. This employee count matches Unemployment Insurance that is also on the quarterly report.	No
	Arin Carmack, Cardinal Services; Michael Kreiter, Insuperity; Catherine Harper, Lyons HR; Emily Marsh; NAPEO; Anthony Kell, Professional Business Solutions, Inc. (PBSI)	02; 03; 04 ; 05; 07	(2) - Oppose employer size determination for co-employers (worker leasing companies, Professional Employer Organizations, or PEO's) at the PEO level and not at the client business level. OregonSaves, OSHA, and Oregon Sick Leave treat employer size at the individual business level and not the PEO level. Client businesses don't qualify for grants or equivalent plans.	Per ORS 657B.150(12)(a) employers shall make and file combined quarterly report of wages and contributions. Because the quarterly filing occurs at the PEO level, the employer size is also determined at the PEO co-employer level. This aligns with Unemployment Insurance, Oregon income tax	No

				withholding, and other programs on the quarterly report.	
	Derek Sangston, Oregon Business & Industry	06	(2) – Supports the employer size definition as written as takes into account industries with higher turnover, replacement workers, and other reporting required by employers.	Support for administrative rule as written, no changes needed.	No
	Tom Ames, Liberty Tax Service	08	(2) – Oppose as suggest the rolling month average be an eight month average instead of four month average. Agrees with the Form OQ for the employee count.	ORS 657B.360(1) requires the size to be determined in a 12-month period and not a 24-month period.	No
471-070-3160 – Employer Size: Method to Determine Number of Employees Employed by an Employer	Tom Ames, Liberty Tax Service	08	Support using the Form OQ for the employee count. There should be a provision to not count people who work under a certain number of hours and quit or leave their employer.	Support for administrative rule as written, no changes needed.	No
471-070-8000 – Appeals: Department Representation in Hearing	Derek Sangston, Oregon Business & Industry	06	Support rule as written as it is an efficient and sensible approach.	Support for administrative rule as written, no changes needed.	No
	Elizabeth Huddleston, King Machine Products Inc.	14	Oppose Oregon Employment Department employees handling the appeals. The department should have nothing to do with this program.	The Paid Leave Oregon program is working together with communities, employers, employees, and advocacy groups to deliver the best possible results for all our communities.	No

General comments:

Rule Number	Name Affiliation	Exhibit Number	Comment Summary	Responses	Rule Change – Yes/No
General Rule Comments	Lynn Thompson, Blueberry Meadows LLC	01	Oppose as hire several employees who make less than \$1,000, yet are required to contribute into the program but likely won't benefit from it.	Contributions shall be made on the first \$1 of wages so once an individual reaches \$1,000 in wages they qualify for benefits. Employees may work several jobs throughout the year and may be over the \$1,000 threshold after working at multiple jobs and would qualify.	No