Memo

NOTICE OF PERMANENT RULEMAKING HEARING

DATE: September 27, 2019
TO: Legislators and Interested Parties
FROM: Erin Seiler, Senior Policy Advisor
RE: Permanent Rulemaking amending:

OAR 839-006-0206 Disability and Employment Rights: Reasonable Accommodation

RULE CAPTION:
Amends Disability and Employment Rights rules to implement OL CH. 71 (2019)
Not more than 15 words that reasonably identify the subject matter of the agency’s intended action.

NOTICE: On September 26, 2019, the Oregon Bureau of Labor and Industries filed a Notice of Proposed Permanent Rulemaking Hearing, with the Oregon Secretary of State, to amend the above referenced administrative rule related to unlawful employment practices regarding the failure of employer to provide reasonable accommodations to an employee or applicant with a disability arising out of transsexualism.

The American with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in employment. State law parallels the ADA, requiring reasonable accommodations be made by employers for employees with disabilities. Oregon law recognizes reasonable accommodations as making existing facilities accessible and usable; restructuring a job schedule; acquiring or modifying equipment or devices; adjustment of examinations, training materials, or policy; or providing interpreters or readers. In addition, Oregon law specified that an employer may not be found to have engaged in an unlawful employment practice solely because the employer failed to provide reasonable accommodation to an individual with a disability arising out of transsexualism.

In 2019, the Oregon Legislature passed House Bill 2589 which made specific updates to employment discrimination statutes. The measure specified that sexual orientation is not a physical or mental impairment for purposes of employment discrimination statutes and repealed the statutory provision that failure to provide reasonable accommodations for individual with disability arising out of transsexualism is not an unlawful employment practice.
The Bureau of Labor and Industries has an administrative rule, OAR 839-006-0206(8), which mirrors the language related to unlawful employment practices repealed by HB 2589, therefore the rule needs to be repealed because it is now in conflict with statute.

A public hearing is scheduled for 11:00 a.m. on October 17, 2019 at the Oregon Bureau of Labor and Industries, 800 NE Oregon St. #1045, Portland, OR, 97232.

**The deadline for public comment on the proposed rules is 5:00 p.m. on October 21, 2019.** Members of the public are welcome to submit comments by mail or email prior to this deadline.

**ATTACHMENTS:** Attached are the Notice of Proposed Rulemaking Hearing, the Statement of Need and Fiscal Impact, and a copy of the rules showing the proposed amendments.

**COMMENTS:** Comments may be emailed to Erin Seiler at erin.seiler@state.or.us or mailed to Erin Seiler c/o BOLI, 800 NE Oregon St. #1045, Portland OR 97232.