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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED
05/28/2021 8:58 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proceedings for Apprenticeship and Training Division Hearings

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/30/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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800 NE Oregon
Portland, OR 97232

Filed By:
Erin Seiler
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/18/2021

TIME: 10:00 AM - 11:00 AM

OFFICER: erin seiler

ADDRESS:

800 NE Oregon
Portland, OR 97232

SPECIAL INSTRUCTIONS:

Due to COVID-19 restrictions, this public hearing will be conducted by teleconference only. The meeting is open to the public.

Please dial 503-300-2595. No access code is needed.

As the presiding officer of the hearing, I will ask for each public participant to state their name and affiliation before they testify.

Written testimony may be submitted via email at erin.seiler@state.or.us.

NEED FOR THE RULE(S):

The Apprenticeship and Training Division (Division) has a disciplinary process for addressing a complaint against a committee, apprenticeship committee or training agent (OAR 839-011-0093). If a complaint is filed with the Division against an apprenticeship committee or training agent, the Division must investigate and make a determination. If the Division determines that the party is not operating in compliance with program standards, it must notify and make a reasonable effort to obtain compliance from the party. If the Division is unable to obtain compliance or the party appeals the finding of the Division, the matter is referred to the Oregon State Apprenticeship and Training Council (Council) to conduct a hearing to show cause. Upon conclusion of the hearing, the Council must decide by a majority vote of the members present whether to issue a determination that the apprenticeship committee or training agent is out of compliance with program standards.

At a recent Council meeting representatives for an apprenticeship committee appealed a determination made by the Division that it was out of compliance, requesting a hearing to show cause. However, the Division did not have administrative rules governing the proceedings for hearings because there is no record of the Council having ever conducted hearing to show cause. Therefore, it was necessary to adopt temporary rules.

The agency proposes to make the temporary rules permanent to ensure that the Division and parties to any future hearing have a clear understanding of the hearing proceedings and can participate in equitable and transparent process.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS Chapter 183 - https://www.oregonlegislature.gov/bills_laws/ors/ors183.html;

OAR Chapter 839 Division 50 - <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=24>

FISCAL AND ECONOMIC IMPACT:

The proposed rule has no fiscal impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The proposed rules will have no economic impact on state agencies, units of local government, or members of the public.

(2) Effect on Small Businesses:

(a) The proposed rules apply to an apprenticeship committee or training agents that request a hearing to show cause after a determination has been made by the Division that it was out of compliance.

(b) There are no reporting, recordkeeping and administrative activities costs required to comply with the proposed rule.

(c) There are no professional services, equipment supplies, labor and increased administration costs required to comply with the rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of the rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

An Administrative Rule Advisory Committee was not consulted because the proposed rule governs the administrative process for show cause hearings in the Apprenticeship and Training Division. The rules were developed in accordance with Chapter 183 and the Administrative Procedure Act.

ADOPT: 839-050-0450

RULE SUMMARY: Administrative rules governing proceedings for a show case hearing by the Apprenticeship and Training Division.

CHANGES TO RULE:

839-050-0450

Proceedings on Apprenticeship and Training Division Hearings

(1) This rule sets forth the procedures used in a proceeding to show cause requested pursuant to OAR 839-011-0093(5).¶

(2) Proceedings on apprenticeship and training committee disciplinary procedures are governed by the procedures set forth in OAR 839-050-0000 to 839-050-0430, except to the extent those procedures are modified by this rule. References to the commissioner in OAR 839-050-0000 to 839-050-0430 will be deemed to refer to the Council, unless the context requires otherwise. References to Agency will be deemed to refer to the Division, unless the context requires otherwise.¶

(3) The following definitions apply to this rule:¶

(a) "Council" means the Oregon State Apprenticeship and Training Council.¶

(b) "Determination" means a determination issued by the Council under the provisions of OAR 839-011-0093(5).¶

(c) "Director" means the individual who serves as council secretary and is responsible for the administration of ORS 660.002 to 660.210, including supervision of all office and field staff.¶

(d) "Division" means the Apprenticeship and Training Division of the Bureau of Labor and Industries.¶

(e) "Local Committee" means any registered joint or trades apprenticeship or training committee approved by the Council.¶

(f) "Registered Apprenticeship Program" means a local committee approved by the Council to operate an apprenticeship or training program in a specific occupation.¶

(g) "Registered Pre-Apprenticeship Program" means a training program approved by the Council that prepares individuals for acceptance into a registered apprenticeship program.¶

(h) "Standards" means a written agreement submitted by a local committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS chapter 660.126 and 660.137. ¶

(i) "Training Agent" means an employer or organization approved by a local committee to employ and train apprentices and registered with the Division.¶

(4) When the Director of the Division has issued a referral for a determination and the training agent or local committee requests a hearing, an Administrative Law Judge will be assigned to hear the case and the Contested Case Coordinator will issue a Notice of Hearing on behalf of the Forum to the party that meets the requirements of OAR 839-050-0080(4). Information on contested case proceedings will be provided as required by OAR 839-

050-0100.¶

(5) In lieu of OAR 839-050-0210 and in addition to OAR 839-050-0260, no later than 14 calendar days before the hearing date:¶

(a) The training agent or local committee will file a written statement identifying all of the party's reasons for contesting the determination, along with all supporting exhibits the party intends to offer at hearing; and¶

(b) The Agency will file copies of all materials considered during the course of its investigation conducted under OAR 839-011-0093(1)-(4), including any complaint or compliance review that prompted the investigation, a copy of the Agency's determination, and copies of any post-determination compliance efforts or proposed corrective action plans. The Agency will mark these materials and the Agency's determination for identification in the manner set forth in 839-050-0270.¶

(c) Each party to the proceeding will file written statements containing the names of all persons they propose to call as witnesses at the hearing, along with a statement of how each person's testimony will help the Administrative Law Judge understand the materials provided by the requester under OAR 839-011-0093(1)-(4) or the reasons for the Agency's referral for a determination or is otherwise relevant or material to the proceeding.¶

(6) The statement, materials, and Agency determination filed pursuant to section (5) of this rule may be received into the record as exhibits.¶

(7) After reviewing the materials and statements filed pursuant to sections (5) and (6) of this rule, the Administrative Law Judge may issue an interim order finding that the testimony of any proposed witness is irrelevant, immaterial, or unduly repetitious and disallowing the proposed testimony. The Administrative Law Judge may also request that the party or Agency bring additional witnesses to the hearing.¶

(8) OAR 839-050-0260 shall generally apply to the conduct of the hearing. At hearing, the Agency, as proponent of its determination, will first present evidence in support of its determination. The party will then have an opportunity to explain the reasons that the party contests the determination and to rebut the Agency's evidence. The Agency may then present evidence to rebut evidence presented by the party. ¶

(9) Motions authorized under OAR 839-050-0150(1), (4), (6), (9), (11), and (12) may not be filed in proceedings conducted under this rule.¶

(10) After the conclusion of the hearing, the Administrative Law Judge will issue a proposed order, if a proposed order is required under OAR 137-003-0060, and the Council will issue a final order on the determination consistent with the requirements of OAR 839-050-0420 and OAR 839-011-0093(5).

Statutory/Other Authority: ORS Chapter 183, ORS Chapter 651.060(4)

Statutes/Other Implemented: ORS 660.120(4)