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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

09/23/2022 2:49 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Implementation of Senate Bill 588, 2021

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2022 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

Oregon law requires an employer with any employees working in this state to implement a sick time policy allows employees to accrue and use up to 40 hours of sick leave each year (the accrual rate is one hour of sick leave for every 30 hours worked). The leave must be paid if the employer has at least ten employees (six for Portland employers). An employer with a sick leave policy, paid vacation policy, or other paid time off program that is substantially equivalent or more generous must comply with the sick leave requirements for the first 40 hours that the employer's policy provides per year. The sick leave requirements establish minimum requirements and do not preempt, limit, or otherwise affect any employer policy or collective bargaining agreement that provides more generous sick time benefits. Currently, the sick leave requirements do not apply to employees subject to a collective bargaining agreement who are employed through a third party (e.g., a hiring hall) and whose benefits are provided by a joint multiemployer-employee trust or benefit plan.

In 2021, the Legislature passed Senate Bill 588, removing the exemption for employees, other than longshore workers, covered under a collective bargaining agreement and who are employed through a third party (e.g., a hiring hall) and whose benefits are provided by a joint multiemployer-employee trust or benefit plan. The measure becomes effective January 1, 2023.

To implement the measure, the agency must repeal OAR 839-007-0060, which exempts certain employees covered by collective bargaining agreements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 653.601-653.661:

https://www.oregonlegislature.gov/bills_laws/ors/ors653.html#:~:text=653.601%20Definitions%20for%20ORS%20653.601%2

OAR 839-007: <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3832>

Senate Bill 588, 2021: <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/SB588>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The administrative rule has no effect on racial equity. Any positive or negative effect on racial equity in this state would be a result of the statutory change in Oregon Law Chapter 491, 2021.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact associated with the administrative rules. Any fiscal or economic impact of the administrative rule is a result of the statute being implemented (Oregon Law Chapter 491, 2021).

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 administrative rule has no economic impact on state agencies, units of local government, or the public.

(2) (a) All small businesses in Oregon are subject to Oregon Sick Time with a distinction that sick leave is protected but not paid for employers with less than 10 employees and protected and paid for employers with more than 10 employees. Oregon has approximately 126,000 small businesses with fewer than 50 employees and 120,000 small businesses with fewer than 25 employees.*

The agency is unable to determine how small businesses will now be required to comply with the requirements of Oregon Sick Time with the removal of the exemption for certain employees subject to a collective bargaining agreement who are employed through a third party, whose benefits are provided by a joint multiemployer-employee trust or benefit plan. The exemption still applies for longshore workers.

*Based on Unemployment Insurance 2020 Tax Wage file.

(2) (b) Any reporting, recordkeeping and administrative costs would be the result of the statute being implemented. There is no cost associated with the administrative rules.

(2) (c) Any professional services, equipment supplies, labor and increased administrative costs would be the result of the statute being implemented. There is no cost associated with the administrative rule

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

Small businesses were not involved in the development of the administrative rules.

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

An administrative rule advisory committee was not consulted because the agency is proposing the repeal of a rule that conflicts with legislation passed by the 2021 Oregon Legislature.

REPEAL: 839-007-0060

RULE SUMMARY: Implementation of Senate Bill 588, 2021

CHANGES TO RULE:

~~839-007-0060~~

~~Exemption for Certain Employees Covered by Collective Bargaining Agreements ¶¶~~

~~(1) The provisions of ORS 653.601 to 653.661 do not apply to an employee who meets all of the following requirements:¶¶~~

~~(a) Whose terms and conditions of employment are covered by a collective bargaining agreement;¶¶~~

~~(b) Who is employed through a hiring hall or similar referral system operated by the labor organization or third party; and¶¶~~

~~(c) Whose employment-related benefits are provided by a joint multi-employer-employee trust or benefit plan.¶¶~~

~~(2) The existence of a collective bargaining agreement alone is not sufficient to meet the requirements of this limited exemption.~~

~~Statutory/Other Authority: ORS 653.601-653.661, ORS 651~~

~~Statutes/Other Implemented: ORS 653.601-653.661, OL Ch. 520 (2017)~~