

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

11/03/2023 8:30 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends rules to delete outdated address and to clarify the application of amended rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/27/2023 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)

The Bureau's Portland office is moving to a new location and rules containing the Bureau's current address must be updated. In addition, many of these rules have not been updated in several years and would benefit from additional clarity, including grammatical updates, making the rules more consistent internally and deleting rule provisions that duplicate other sources of law or otherwise interact with state statutes in a manner that detracts from clarity around the application of the rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

No documents were relied upon.

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

The amendments to these rules are unlikely to affect racial equity in this state. The rule amendments delete the address for the Bureau's Portland office and make technical adjustments to the rules intended to clarify their application and make the rules more accessible to the reader.

FISCAL AND ECONOMIC IMPACT:

Deleting the Bureau's address from the text of the rules is unlikely to have a fiscal impact. Similarly, the Bureau does not anticipate a fiscal impact resulting from any of the clarifying amendments in the rules.

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).

Any state agency, unit of local government or member of the public who seeks to file a paper form with the Bureau will be affected by the rule amendments, although it is unlikely that they will result in an economic impact. It is also unlikely that any clarifying amendments to these rules will result in an economic impact. According to the U.S. Small Business Administration, there are approximately 400,000 small businesses operating in Oregon. It is likely that a very small subset of these businesses, likely less than one percent, will mail paper forms to the Bureau or otherwise be impacted by these rule amendments, which implicate rules ranging from prevailing wage to child labor. Given the range of forms utilized by the Bureau, it is likely that all types of small businesses could be impacted by these rules. The Bureau does not anticipate that these rule changes will result in any increased reporting, recordkeeping and administrative activities or cost, nor does the Bureau expect any increased costs of professional services, equipment supplies, labor or increased administration in order to comply with these rules.

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

Small businesses, as well as the public at large are invited to provide comment on these rules and the Bureau is providing notice of the proposed rules via its website, mailing list and the Oregon bulletin.

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

The primary purpose of the rule amendments is to delete an outdated address. The secondary purpose of the rule amendments is to improve their readability. Public comment that assesses whether these largely non-substantive purposes have been achieved are likely to be at least as useful as advice provided by a smaller committee.

RULES PROPOSED:

839-001-0148, 839-014-0090, 839-014-0260, 839-015-0600, 839-015-0610, 839-017-0300, 839-020-0115, 839-020-0420, 839-021-0067, 839-021-0070, 839-021-0246, 839-021-0276, 839-021-0290, 839-021-0292, 839-021-0315, 839-021-0355, 839-025-0003, 839-025-0005, 839-025-0008, 839-025-0038, 839-025-0750, 839-050-0020, 839-050-0100

AMEND: 839-001-0148

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-001-0148

Undue Hardship Notices and Employee's Written Consent

(1) Pursuant to the provisions of ORS 652.020(4), an employer that processes perishable products may be exempt from the restrictions on maximum workweek hours if an undue hardship exists. To claim such an exemption, an employer must provide notice of the undue hardship period to the ~~commissioner~~Bureau within seven (7) calendar days of the beginning of the hardship period permitting employees to work more than 55 hours in one workweek (or more than 60 hours if the employee has previously consented to work up to 60 hours in one workweek pursuant to ORS 652.020(2)(b) and OAR 839-001-0147). The notice submitted by the employer to the ~~commissioner~~Bureau must include:¶

- (a) The name and address of the employer;¶
- (b) A description of the reasons for the undue hardship period;¶
- (c) The start and expected end dates of the undue hardship period;¶
- (d) An estimate of the number of employees whose work hours will exceed the maximum workweek hours because of the undue hardship exemption;¶
- (e) The start and end dates of any undue hardship periods previously claimed by the employer in the same calendar year;¶
- (f) The printed name and signature of the person submitting the notice, with the date of signature.¶

(2) The employer's notice of the undue hardship period may be submitted on Form WH-262, which is available to any interested person. An employer may copy this form or use a similar form provided that such the form contains

all of the elements of Form WH-262. The notice must be delivered to: Bureau of Labor and Industries, Wage and Hour Division, 800 NE Oregon Street, Suite 1045, Portland, OR 97232-2180.¶

(3) When claiming an undue hardship exemption, an employer must obtain written consent from each employee whose work hours, pursuant to ORS 652.020(2)(c), will exceed the maximum workweek hours because of the undue hardship exemption. The written consent, which must be completed by the employee prior to performing work during the undue hardship period, must include:¶

(a) A description of the employer's reasons for the undue hardship period;¶

(b) The start and expected end dates of the undue hardship period;¶

(c) A statement that the employer may require the employee to work up to 84 hours in a workweek for up to four workweeks during the undue hardship period;¶

(d) A statement that the employer may require the employee to work up to 80 hours in a workweek for the remainder of the undue hardship period;¶

(e) A statement that the employee consents to working up to 84 hours in a workweek for up to four weeks during the undue hardship period and up to 80 hours in a workweek for the remainder of the undue hardship period but that the employee may withdraw such consent at any time in writing, no less than seven (7) calendar days prior to the start of the workweek in which the employee no longer consents to work over 55 hours in the workweek;¶

(f) A statement that the employee has the right to decline to work more than 55 hours per workweek.¶

(g) The printed name and signature of the employee completing the written consent, with the date of signature; and¶

(h) Contact information for the Bureau of Labor and Industries.¶

(4) To provide the written consent, an employee may use Form WH-263 or any similar form provided that ~~such~~the form contains all of the elements of Form WH-263. The employee's written consent must be in the language used by the employer to communicate with the employee.¶

(5) The employer must retain and keep available to the ~~commissioner~~Bureau a copy of each employee's written consent during the period for which the written consent is in effect and for no less than one year thereafter.

Statutory/Other Authority: ORS 651.060(4), ORS ~~chapter 652~~, OL Ch. 685 (2017), 652.020

Statutes/Other Implemented: ORS ~~chapter 652~~652.020

AMEND: 839-014-0090

RULE SUMMARY: Amends rule to delete outdated address.

CHANGES TO RULE:

839-014-0090

Procedure for Obtaining an Indorsement ¶¶

An indorsement may be applied for as follows:¶¶

(1) File a completed application on forms supplied by the Bureau. In the case of a partnership or corporation, each partner, majority shareholder or major shareholders must complete and file a separate application form.¶¶

(2) Pay the appropriate fees at the time the application is filed. In the case of a partnership, each partner must pay the appropriate fee.¶¶

(3) File with the application proof of financial ability as provided for in ORS 658.415 or 658.735, whichever is greater, or a greater amount if required by the Commissioner, on forms supplied by the Bureau. In the case of a partnership, each partner must file such proof. Such proof may be a corporate surety bond, or a deposit in cash or negotiable securities acceptable to the Commissioner.¶¶

(4) File any assumed business name and corporate name with the Corporation Division and submit proof of such filing with the application.¶¶

(5) If a corporation, show proof of being authorized to do business in Oregon.¶¶

~~(6) All forms, documents and other required information shall be filed with Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 N.E. Oregon, #32, Portland, OR 97232.~~

Statutory/Other Authority: ORS 658.407(3), ORS 658.415(14), ORS 658.730(1), ORS 658.820, ORS 658.415, ORS 658.735

Statutes/Other Implemented: ORS 658.415, 658.730(1), 07, ORS 658.415, ORS 658.730, ORS 658.820, ORS 658.415, ORS 658.735

AMEND: 839-014-0260

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-014-0260

Procedure for Filing Protest ¶¶

- (1) Any individual desiring to protest the issuance of an indorsement must file the protest in writing with the Bureau of Labor and Industries, ~~Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.~~¶
- (2) The written protest must contain the following information:¶¶
- (a) Name, address and phone number of the individual filing the protest;¶¶
 - (b) Date of the protest;¶¶
 - (c) Name of indorsee or applicant against whom the protest is being made;¶¶
 - (d) A complete statement of the facts, circumstances and other reasons for the protest. The statement ~~should~~may include alleged violations, approximate dates of alleged violations, names of witnesses, if any, and any documents which support the allegations; and¶¶
 - (e) The signature of the individual making the protest.
- Statutory/Other Authority: ORS ~~164, 165, 651, 658, 962~~658.420
- Statutes/Other Implemented: ORS 658.420, ORS 658.705 - 658.850

AMEND: 839-015-0600

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-015-0600

Procedure for Filing Civil Action under ORS 658.453(4) ¶

- (1) Any worker who wishes to file a civil action pursuant to ORS 658.453(4) must first file a complaint with the ~~commissioner~~Bureau. ¶
- (2) The complaint ~~shall~~must be in writing; and ~~shall~~ contain the ~~name or~~ names of the persons or entities against whom the complaint is ~~being~~ filed. A copy of the proposed complaint to be filed with the court ~~should~~may, if available, be attached to the complaint filed with the ~~commissioner~~Bureau. The worker filing the complaint with the ~~commissioner~~ shouldBureau may also state whether the worker intends to pursue a private civil court action. ¶
- (3) The complaint ~~is~~ shall be considered filed with the ~~commissioner~~Bureau on the date that it is mailed ~~to the following address: Bureau of Labor and Industries; Wage and Hour Division, 800 NE Oregon Street #1045, Portland, OR 97232.~~ ¶
- (4) The complaint that is filed with the commissioner ~~should be filed prior to the filing in court of a civil complaint pursuant to ORS 658.453(4). However, if the complaint filed with the commissioner is not filed prior to the filing of a complaint in court but is done so before the entry of a final judgment, it shall be considered to be filed timely for purposes of ORS 658.453(4) or electronically transmitted to the Bureau.~~

Statutory/Other Authority: ORS 651, ~~658.060~~, ORS 658.450

Statutes/Other Implemented: ORS 658.405 – ~~658.503~~53, ORS 658.405 - 658.511, ORS 658.450

AMEND: 839-015-0610

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-015-0610

Actions Under ORS 658.475 for Injunctive or Declaratory Relief and Damages ¶

(1) Any person, including any worker, who wishes to file a civil action pursuant to ORS 658.475 may do so. The person is not required to file a complaint with the ~~commissioner~~Bureau. However, if a person filing ~~such~~the action desires to notify the ~~commissioner~~Bureau, the/she person may do so by sending a copy of the complaint that the person filed with the court to: ~~Bureau of Labor & Industries, Wage and Hour Division, 800 NE Oregon Street #1045, Portland, OR 97232~~ the Bureau. ¶

(2) The damages provided for in ORS 658.475 are in addition to damages provided for in any other statute including, but not limited to, ORS 658.453(4). ¶

~~(3) The commissioner or any other person, including workers, may bring a civil action under ORS 658.475.~~

Statutory/Other Authority: ORS 651, 658.060

Statutes/Other Implemented: ORS 658.405 - ORS 658.503

REPEAL: 839-017-0300

RULE SUMMARY: Repeals rule relating to waiver.

CHANGES TO RULE:

~~839-017-0300~~

~~Waiver from Requirement to Use Word "Agency" or "Agencies" as Part of Name of Employment Agency~~

- ~~(1) Employment agencies desiring to apply for a waiver from the use of the word "agency" or "agencies" as required by ORS 658.195(4) may do so by submitting an application to the Bureau of Labor and Industries.¶¶~~
- ~~(2) Applications for a waiver will be in writing and on forms provided by the Bureau of Labor and Industries. All completed applications will be mailed or delivered to the Licensing Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon #32, Portland, Oregon, 97232.¶¶~~
- ~~(3) Applicants for waivers must clearly and concisely state each and every situation and each and every reason for desiring not to use the word "agency" or "agencies." All such reasons must be in writing and appear on the application form or attachments thereto.¶¶~~
- ~~(4) When granting or denying an application for a waiver, the Commissioner or the Commissioner's designated representative, will consider the following circumstances:¶¶~~
 - ~~(a) Whether the name of the agency will convey to the public that an employment agency rather than an employer is involved when the word "agency" or "agencies" is not used;¶¶~~
 - ~~(b) Whether descriptive language proposed to be used by the agency in conjunction with its licensed name will convey to the public that an employment agency rather than an employer is involved when the word "agency" or "agencies" is not used;¶¶~~
 - ~~(c) Whether advertising materials are directed toward the public or employers;¶¶~~
 - ~~(d) Whether signs are used primarily for identification purposes rather than advertising;¶¶~~
 - ~~(e) Whether forms used by the agency are internal in nature and not normally seen by the applicant for employment;¶¶~~
 - ~~(f) Other situations and circumstances as may be appropriate.¶¶~~
- ~~(5) The Commissioner or the Commissioner's designated representative, will consider any and all the circumstances set forth in section (4) of this rule when granting or denying an application.¶¶~~
- ~~(6) The Commissioner or the Commissioner's designated representative will specify each and every reason for denying an application and each and every condition on approval of the application, if any.~~

~~Statutory/Other Authority: ORS 658.210~~

~~Statutes/Other Implemented: ORS 658.195~~

AMEND: 839-020-0115

RULE SUMMARY: Amends rule to delete outdated address and to update name of Bureau's Employer Assistance Unit.

CHANGES TO RULE:

839-020-0115

Relationship of State and Federal Law ¶

(1) The Bureau of Labor and Industries has been informed and has reason to believe that there exists confusion and uncertainty on the part of employers concerning the inter-relationship of the Federal Fair Labor Standards Act and the regulations adopted pursuant thereto and the State Minimum Wage Law and the administrative rules adopted thereunder.¶

(2) The purpose of this rule, therefore, is to inform employers of the proper application of the law and to direct them to authoritative sources in cases of doubt.¶

(3) Employers who are required to comply with the state and federal laws, regulations and rules referred to in section (1) of this rule are required to comply with all standards set by those laws, regulations and rules. When one set of standards differs from the other, the standards most advantageous to employees must be met. For example, when the state minimum wage requires a higher hourly rate to be paid than the federal minimum wage rate, the state rate must be paid. By paying the higher rate, the employer complies with both standards. Another example is when the employer may qualify for an exemption under the state law but not the federal law. In this case, the employer is required to comply with the federal law.¶

(4) Employers may contact the ~~Technical~~ Employer Assistance Unit of the Bureau of Labor and Industries, ~~800 N.E. Oregon, #32, Portland, OR 97232~~ for more information on specific fact situations.¶

(5) The purpose of this rule is stated in section (2) of this rule. The rule should not be interpreted to mean anything other than this stated purpose.

Statutory/Other Authority: ~~ORS 653.060~~, ORS 653.261

Statutes/Other Implemented: ~~ORS 653.010~~, 653.261

AMEND: 839-020-0420

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-020-0420

Undue Hardship Notices and Employee's Written Consent

(1) Pursuant to the provisions of ORS 653.265(5)(a), an employer that processes perishable products may be exempt from the restrictions on maximum workweek hours if an undue hardship exists. To claim such an exemption, an employer must provide notice of the undue hardship period to the ~~commissioner~~Bureau within seven(7) calendar days of the date on which the undue hardship period begins. The notice submitted by the employer to the ~~commissioner~~Bureau must include:¶

(a) The name and address of the employer;¶

(b) A description of the reasons for the undue hardship period;¶

(c) The start and expected end dates of the undue hardship period;¶

(d) An estimate of the number of employees whose work hours will exceed the maximum workweek hours because of the undue hardship exemption;¶

(e) The start and end dates of any undue hardship periods previously claimed by the employer in the same calendar year; and¶

(f) The printed name and signature of the person submitting the notice, with the date of signature.¶

(2) The employer's notice of the undue hardship period may be submitted on Form WH-262, which is available to any interested person. An employer may copy this form or use a similar form provided that such form contains all of the elements of Form WH-262. ~~The notice must be delivered to: Bureau of Labor and Industries, Wage and Hour Division, 800 NE Oregon Street, Suite 1045, Portland, OR 97232-2180.~~¶

(3) When claiming an undue hardship exemption, an employer must obtain written consent from each employee whose work hours, pursuant to ORS 653.265(2)(c), will exceed the maximum workweek hours because of the undue hardship exemption. The written consent, which must be completed by the employee prior to performing work during the undue hardship period, must include:¶

(a) A description of the employer's reasons for the undue hardship period;¶

(b) The start and expected end dates of the undue hardship period;¶

(c) A statement that the employer may require the employee to work up to 84 hours in a workweek for up to four workweeks during the undue hardship period;¶

(d) A statement that the employer may require the employee to work up to 80 hours in a workweek for the remainder of the undue hardship period;¶

(e) A statement that the employee consents to working up to 84 hours in a workweek for up to four weeks during the undue hardship period and up to 80 hours in a workweek for the remainder of the undue hardship period but that the employee may withdraw such consent at any time in writing, no less than seven(7) calendar days prior to the start of the workweek in which the employee no longer consents to work over 55 hours in the workweek;¶

(f) A statement that the employee has the right to decline to work more than 55 hours per workweek;¶

(g) The printed name and signature of the employee completing the written consent, with the date of signature; and¶

(h) Contact information for the Bureau of Labor and Industries.¶

(4) To provide written consent, an employee may use Form WH-263 or any similar form provided that such form contains all of the elements of Form WH-263. The employee's written consent must be in the language used by the employer to communicate with the employee.¶

(5) The employer must retain and keep available to the ~~commissioner~~Bureau a copy of each employee's written consent during the period for which the written consent is in effect and for no less than one year thereafter.

Statutory/Other Authority: ~~OL Ch. 685 (2017)~~RS 653.265, ORS 651.060

Statutes/Other Implemented: ~~OL Ch. 685 (2017)~~, ORS RS 653.265

AMEND: 839-021-0067

RULE SUMMARY: Amends rule to delete outdated office address and to clarify application.

CHANGES TO RULE:

839-021-0067

Hours of Employment for Minors 16 and 17 Years of Age ¶¶

(1) An employer may not employ a 16- or 17-year-old to work more than 44 hours per week except those employed in organized youth camps or those employed in agricultural employment.¶¶

(2) An employer who wishes to employ a 16- or 17-year-old to work more than 44 hours per week must be issued ~~first obtain~~ a Special Emergency Overtime Permit ~~by~~from the Bureau. This permit will not be issued unless:¶¶

(a) The number of hours ~~does~~ not exceed those provided by statute; and¶¶

(b) When the minor is not otherwise exempt from the overtime pay provisions of any law, the minor receives one- and one-half times the regular rate of pay for all hours worked over 40 in a workweek and other overtime where it applies.¶¶

(3) The maximum number of hours for a 16- or 17-year-old employed in a cannery is ten hours per day.¶¶

(4) An employer who wishes to employ a 16- or 17-year-old in a cannery for time in excess of ten hours per day, ~~may apply in writing to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180~~ but no more than 55 hours in a week, may apply in writing to the Bureau.¶¶

(a) The employer must set out the full and complete circumstances of the proposed employment in the written application.¶¶

(b) The Bureau will investigate the terms and conditions of the proposed employment ~~and i.~~¶¶

~~(c) If the Bureau determines that the character of the employment is suitable and, that the employment will not adversely affect the physical and moral well-being of the minor, and that the hour limitation creates an adverse effect on the opportunities of the minor, the Bureau will issue a Special Emergency Overtime Permit to the employer.~~¶¶

~~(5) If, after the investigations referred to in section (4)(b) of this rule,~~ d) If the Bureau determines that the character of the employment is unsuitable and, that such the employment will adversely affect the physical and moral well-being of the minor or that there is no adverse effect on the employment opportunities of the minor, the Bureau will refuse to issue a Special Emergency Overtime Permit.

Statutory/Other Authority: ~~ORS 651.060(4),~~ ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: ~~S.B. 135, 77th Leg., Reg. Ses. (Or. 2013)~~ ORS 653.261, ORS 653.305

AMEND: 839-021-0070

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-021-0070

Hours of Employment for Minors Under 16 Years of Age ¶¶

(1) Except as otherwise provided in this rule, employment of minors under 16 years of age must be confined to the following periods:¶¶

(a) Outside school hours;¶¶

(b) Not more than 40 hours in any one week when school is not in session;¶¶

(c) Not more than 18 hours in any one week when school is in session;¶¶

(d) Not more than eight hours in any one day when school is not in session;¶¶

(e) Not more than three hours in any one day when school is in session;¶¶

(f) Between 7 a.m. and 7 p.m., except that during the summer (June 1 through Labor Day) the minor may work until 9:00 p.m.¶¶

(2) In the case of enrollees in work training programs conducted under Part B of Title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of subsection (1)(a) of this rule if the employer has on file with the records kept pursuant to OAR 839-021-0170 an unrevoked written statement of the Regional Manpower Administrator of the U.S. Department of Labor or representative setting out the periods which the minor will work and certifying that the minor's employment confined to such periods will not interfere with the minor's health and well-being, countersigned by the principal of the school which the minor is attending with the principal's certificate that such employment will not interfere with the minor's schooling.¶¶

(3) In the case of students enrolled in a career exploration or other work experience program, there is an exception to subsection (1)(a) of this rule when:¶¶

(a) The minor is employed as a student learner pursuant to ORS 653.070; or¶¶

(b) The minor is enrolled in a school-supervised and school-administered work experience and career exploration program meeting the educational standards established and approved by the Oregon Department of Education.¶¶

(4) This rule does not apply when Title 29, CFR, Part 570, Subpart C, Section 570.35a would otherwise apply.¶¶

(5) Employment of minors enrolled in a program pursuant to sections (2), (3), and (4) of this rule must be confined to not more than 23 hours in any one week when school is in session and not more than three hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of section (1) of this rule, this section will be controlling.¶¶

(6) The employment of a minor enrolled in a program pursuant to sections (2), (3), and (4) of this rule must not have the effect of displacing a worker employed in the establishment of the employer.¶¶

(7) The Bureau may waive the provisions of section (1)(f) of this rule and OAR 839-021-0246(4)(d) and authorize minors under 16 years of age employed by their parent(s) or person(s) standing in the place of their parent(s) to work as late as 9:00 p.m. when the Bureau determines that such hours of work will not be detrimental to the health, safety or education of the children so employed and the minor is supervised by the minor's parent(s) or person(s) standing in the place of their parent(s) during the extended hours employed. No minor may be employed to work in violation of the provisions of (1)(a), (b), (c), (d), and (e) of this rule or, in the case of minors under 14 years of age, in violation of 839-021-0246(4)(a), (b), and (c).¶¶

(8) Pursuant to section (7) of this rule, a parent/employer desiring to employ a minor under 16 years of age later than the times permitted in section (1)(f) of this rule, or a minor under 14 years of age later than the times permitted in OAR 839-021-0246(4)(d), may apply in writing to the Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180 Bureau. The Bureau will investigate the employment and the facts and circumstances set out in the application. If the Bureau determines that the employment is suitable and will not adversely affect the well-being of the minor(s), the Bureau will issue a special permit to the parent/employer, setting out the terms and conditions of the permit.¶¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 651.060(4), ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or.2013) ORS 653.261, ORS 653.305

AMEND: 839-021-0246

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-021-0246

Employment Permits for Minors Under 14 Years of Age ¶¶

(1) No child under 14 years of age may be employed or permitted to work unless the employer has been issued a validated Employment Permit by the Bureau authorizing the child to work for that particular employer.¶¶

(2) A minor under 14 years of age and an employer who wishes to employ the minor under the provisions of ORS 653.320(4) ~~which exempt the minor from the provisions of section (1), (2), or (3) of ORS 653.320, must make a joint application for an Employment Permit using a form supplied by the Wage and Hour Division and available at any office of the Bureau. The application must be delivered to the Child Labor Unit of the Wage and Hour Division, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180~~ must make a joint application for an Employment Permit using a form available online or at any office of the Bureau. Each application must include:¶¶

(a) Minor's name and residence address, and the name and address of parents or legal guardian;¶¶

(b) Minor's date of birth and proof of age, consisting of either a certified copy of a birth certificate, hospital certificate, baptismal certificate, or other acceptable proof of age;¶¶

(c) Last grade in school completed and the school currently attended and its address;¶¶

(d) Name and address of prospective employer and nature of such employer's business;¶¶

(e) Amount of compensation to be paid;¶¶

(f) The maximum number of hours proposed to be worked on any given day, the maximum number of hours to be worked in any work week, and the maximum number of days proposed to be worked in any work week;¶¶

(g) A complete description of the work proposed to be performed;¶¶

(h) A separate certification by the employer that the minor will be continuously supervised by a responsible adult.¶¶

(3) The Bureau will investigate the circumstances of the proposed employment and the information contained in the application. If the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the well-being of the minor, the Bureau will issue an Employment Permit, setting out limitations concerning the employment deemed appropriate by the Bureau, which limitations should be consistent with the provisions of section (4) of this rule.¶¶

(4) Except as provided in OAR 839-021-0070(7), employment permits for the employment of minors under 14 years of age may be issued only under the following circumstances:¶¶

(a) Hours of employment for minors under 14 years of age during the term when schools are in session will be limited to not more than two hours after school hours; not more than six hours on Saturdays and Sundays; and not more than 18 hours per week, not to exceed five work days in one week;¶¶

(b) During any vacation period extending over a period of two weeks or longer, minors under 14 years of age may not be employed more than eight hours in any one day and not more than 40 hours in one week and not more than five work days in one week;¶¶

(c) Minors under 14 years of age may not be employed in any enterprise subject to the Federal Fair Labor Standards Act, (29 U.S.C. 201, et seq.), in any establishment where alcoholic beverages are dispensed or served, in any theater or amusement park, in any work that involves the minor in canvassing door to door, or in any establishment catering to adults only;¶¶

(d) ~~Except as provided in OAR 839-021-0070, m~~Minors under 14 years of age may not be employed before the hour of 8 a.m. or after the hour of 6 p.m.¶¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 651.060(4), ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: S.B. 135, 77th Leg., Reg. Ses. (Or. 2013) ORS 653.261, ORS 653.305

AMEND: 839-021-0276

RULE SUMMARY: Amends rule to delete outdated address.

CHANGES TO RULE:

839-021-0276

Employment Certificates for Minors Employed in Agriculture ¶¶

(1) The provisions addressing Employment Certificates, OAR 839-021-0220 to 839-021-0221, do not apply to the employment of minors in agriculture except as follows:¶¶

(a) Minors employed to operate or assist in the operation of power-driven farm machinery;¶¶

(b) Minors employed to ride in or on power-driven farm machinery; and¶¶

(c) Minors employed to ride in or on equipment, trailers, or similar conveyances connected to power-driven farm machinery for the purpose of transporting, sorting, delivering, or otherwise processing farm products.¶¶

(d) Employment Certificates are not required under (a), (b) or (c) if a minor is employed by their parent or person standing in the place of their parent as provided by OAR 839-021-0297.¶¶

~~(2) The Employment Certificate application must be submitted to the Child Labor Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Ste 1045, Portland OR 97232-2180.¶¶~~

~~(3) Employers employing minors to operate power-driven farm machinery, to ride in or on power-driven farm machinery or to ride in or on equipment, trailers, or similar conveyances which are connected to power-driven farm machinery must not permit the minor to operate power-driven farm machinery, assist in the operation of the machinery, to ride in or on the machinery or to ride in or on equipment, trailers or similar conveyances which are connected to power-driven farm machinery, until the employer has complied with OAR 839-021-0280 or 839-021-0282.~~

Statutory/Other Authority: ~~ORS 653.307(1), 1.060, ORS 653.261, ORS 653.305, ORS 653.525~~ORS 653.307(1), 1.060, ORS 653.261, ORS 653.305, ORS 653.400

Statutes/Other Implemented: ~~ORS 653.307(1), 653.365~~ORS 653.307(1), 653.365, 261, ORS 653.305, ORS 653.307, ORS 653.400

AMEND: 839-021-0290

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-021-0290

Permitted Hours of Work of Minors under 16 Years of Age in Agriculture ¶¶

(1) Minors under 16 years of age may not be employed to work in agriculture while the school they attend is in session. As used in this rule, school is in session during the hours set by the school district in which the minor resides while employed in agriculture in accordance with the official school calendar of the district. A school week is any week in which school is in session for at least three days.¶¶

(2) The hours of work by minors in agriculture under 16 years of age may not exceed:¶¶

(a) Three hours a day on school days;¶¶

(b) Ten hours a day on non-school days;¶¶

(c) 25 hours a week during school weeks;¶¶

(d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:¶¶

(A) Ten hours per day; and¶¶

(B) 60 hours per week.¶¶

(e) Six days in any week at any time.¶¶

(3) Notwithstanding section (2) of this rule, when a minor under 16 years of age is employed in agriculture to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, the maximum number of hours the minor may work may not exceed:¶¶

(a) Three hours a day on school days;¶¶

(b) Eight hours a day on non-school days;¶¶

(c) Eighteen hours a week during school weeks;¶¶

(d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:¶¶

(A) Ten hours per day, 60 hours a week during the harvest season;¶¶

(B) Ten hours per day, 44 hours per week outside the harvest season;¶¶

(C) A greater number of weekly hours may be permitted when worked outside the harvest season pursuant to a Special Emergency Overtime Permit issued by the Bureau. However, even though a permit may be issued, the maximum number of hours worked in a week may not exceed 60.¶¶

(e) Six days in any week at any time.¶¶

(4) Notwithstanding sections (2) and (3) of this rule, the Bureau may issue special permits to employers for the employment of minors under 16 years of age in agriculture for more than the maximum number of hours provided in this rule when the Bureau determines that such hours of work will not be detrimental to the health and safety of the minors so employed.¶¶

(a) An employer desiring to employ a minor in agriculture for more than the maximum number of hours provided in this rule may apply in writing to the ~~Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland OR 97232-2180~~ Bureau.¶¶

(b) The Bureau will investigate the employment and the facts and circumstances set out in the application. If the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor(s), the Bureau will issue a Special Emergency Overtime Permit to the employer, setting out the terms and conditions of the permit and the period of time for which it will be effective.¶¶

~~Nothing in this rule should be construed to~~ This rule does not regulate the daily starting and quitting times of minors under 16 years of age who are employed in agriculture.

Statutory/Other Authority: ~~ORS 651.060(4),~~ ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: ~~S.B. 135, 77th Leg., Reg. Ses. (Or. 2013)~~ ORS 653.261, ORS 653.305

AMEND: 839-021-0292

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-021-0292

Permitted Hours of Work of Minors 16 and 17 Years of Age in Agriculture ¶

(1) When a minor who is 16 or 17 years of age is employed to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, notwithstanding OAR 839-021-0067, the maximum number of hours the minor may work may not exceed:¶

(a) 25 hours a week during school weeks;¶

(b) From the last day of the most recently completed school year of the district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture, 60 hours per week ~~(notwithstanding OAR 839-021-0067(1));~~¶

(2) As used in this rule, the terms "school week" and "school is in session" have the ~~same meaning as that provided given those phrases~~ in OAR 839-021-0290(1).¶

(3) Notwithstanding section (1) of this rule, the Bureau may issue special permits to employers for the employment of minors 16 and 17 years of age in agriculture for more than the maximum number of hours provided in this rule when the Bureau determines that such hours of work will not be detrimental to the health and safety of the children so employed.¶

(a) An employer who wishes to employ a minor 16 and 17 years of age in agriculture for more than the maximum number of hours provided in this rule may apply in writing to the ~~Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232-2180~~Bureau.¶

(b) The Bureau will investigate the employment and the facts and circumstances set out in the application. If the Bureau determines that the character of the employment is suitable and that the employment will not adversely affect the ~~physical and moral~~ well-being of the minor(s), the Bureau will issue a Special Emergency Overtime Permit to the employer, setting out the terms and conditions of the permit and the period of time for which it will be effective.¶

(4) ~~Nothing in this rule should be construed to~~ This rule does not regulate the daily starting and quitting times of minors who are 16 or 17 years of age who are employed in agriculture.

Statutory/Other Authority: ~~ORS 651.060(4),~~ ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: ~~S.B. 135, 77th Leg., Reg. Ses. (Or. 2013)~~ ORS 653.261, ORS 653.305

AMEND: 839-021-0315

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-021-0315

Special Hours Variances for Entertainment Industry Employers ¶

Employers, including ~~employers~~ registered ~~employers~~ under OAR 839-021-0320, must apply for a special hours variance when the contemplated employment will exceed the maximum hours prescribed in OAR 839-021-0335. Employers must address a letter application to the ~~Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232-2180~~ Bureau of Labor and Industries setting out the full and complete circumstances of the proposed employment and the reasons why a special hours variance is being requested.

Statutory/Other Authority: ~~ORS 651.060(4),~~ ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: ~~S.B. 135, 77th Leg., Reg. Ses. (Or. 2013)~~ ORS 653.261, ORS 653.305

AMEND: 839-021-0355

RULE SUMMARY: Amends rule to delete outdated address and to clarify application, including application of exemptions.

CHANGES TO RULE:

839-021-0355

Prohibited Performances of Minors Employed in the Entertainment Industry ¶¶

- (1) No employer may employ a minor in the entertainment industry in any occupation declared particularly hazardous pursuant to OAR 839-021-0102 and 839-021-0104 or in employment prohibited by 839-021-0097 and 839-021-0276 to 839-021-0285. However, a safe simulation of such employment may be allowed.¶¶
- (2) Minors under fifteen days of age may not be employed in the entertainment industry.¶¶
- (3) Minors under one year of age may not be employed in the entertainment industry unless the employer can demonstrate a need for such minor. A separate letter of application must be submitted to the ~~Child Labor Unit of the Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., Suite 1045, Portland, OR 97232-2180~~ Bureau setting forth the details of the needed employment. The letter must include:¶¶
 - (a) A complete description of the action in which the minor is expected to participate; and¶¶
 - (b) Certification that the minor will not be engaged for longer than the hours allowed by OAR 839-021-0335; and¶¶
 - (c) A signed statement from the minor's parent permitting the employment; and¶¶
 - (d) A signed statement from a physician licensed by the Oregon State Board of Health attesting that the minor is physically able to perform the expected duties. The physician's statement must be accompanied by the physician's complete address and the physician's agreement to furnish the Bureau of Labor and Industries with any or all of the information necessary to confirm the particulars of such statement.¶¶
- (4) No employer may employ a minor under one year of age in the entertainment industry unless a registered nurse is present and available to the minor at all times while the minor is present.¶¶
- (5) No employer may employ a minor in the entertainment industry when the employment would place the minor in a clear and present danger to life and limb. If the minor believes there exists such danger, the employer must, at the same time, discuss the matter with the minor and the minor's parent or guardian together. If the minor persists in the belief that a clear and present danger to life and limb exists, regardless of its validity, the employer must not require the minor to perform the activity the minor believes will present such danger.¶¶
- (6) No employer may employ a minor to participate in a performance in the entertainment industry unless the minor has been trained to portray it safely.¶¶
- (7) No employer may employ a minor to participate in, or be present during, an ~~obscene~~ performance or the depiction of an ~~obscene~~ performance in violation of ORS 163.665 to 163.695 or 167.060 to 167.095.¶¶
- (8) No employer may employ a minor in a place of public amusement or entertainment in violation of ORS 167.830 to 167.840.¶¶
- (9) No employer may employ a minor to be exhibited in a trance.¶¶
- (10) Notwithstanding the provisions of OAR 839-021-0102 and this rule, upon written request, the Bureau may, for good cause shown, exempt the employment of a minor under 16 years of age in the entertainment industry from the provisions of OAR 839-021-0102 ~~and this rule~~ after determining that the exemption will not be detrimental to the health or safety of the minor affected. ~~Such~~ The exemption will be granted only under circumstances including but not limited to the following:¶¶
 - (a) The employment is not in violation of federal child labor regulations;¶¶
 - (b) The minor employee is adequately trained to perform the duties requested;¶¶
 - (c) The minor employee will be adequately supervised in performing the duties of the position;¶¶
 - (d) The parent or person standing in the place of the minor's parent has given written consent for the employment of the minor to perform duties otherwise prohibited; and¶¶
 - (e) The employer complies with all other applicable provisions of laws and rules.

Statutory/Other Authority: ~~ORS 651.060(4),~~ ORS 653.261, ORS 653.305, ORS 653.307, ORS 653.400, ORS 653.040

Statutes/Other Implemented: ~~S.B. 135, 77th Leg., Reg. Ses. (Or. 2013)~~ ORS 653.261, ORS 653.305

AMEND: 839-025-0003

RULE SUMMARY: Amends rule to delete outdated address.

CHANGES TO RULE:

839-025-0003

Forms; Availability; Submittal ¶

~~(1) All forms referenced in these rules may be obtained on the Bureau's website, www.oregon.gov/boli or at the address listed below.¶~~

~~(2) Completed forms, requests and fees referenced in these rules may be filed with the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St. #1045, Portland, OR 97232 any office of the Bureau of Labor and Industries.~~

~~Statutory/Other Authority: ORS 279.348, 279.38C.808, ORS 651.060, ORS 653.040~~

~~Statutes/Other Implemented: ORS 279.348, 279.38C.808, ORS 651.060, ORS 653.040~~

AMEND: 839-025-0005

RULE SUMMARY: Amends rule related to delete outdated address and to clarify application.

CHANGES TO RULE:

839-025-0005

Purpose and Procedure for Determination Requests ¶

(1) A request for a determination as to whether a project or proposed project is a public works under ORS 279C.817, must meet the following requirements before it will be considered by the ~~commissioner~~Bureau.¶

(a) The request must be in writing, ~~and~~ describe all relevant details of the project or proposed project, ~~and be submitted to: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., #1045, Portland, OR, 97232.~~¶

(b) A copy of the request must be sent to any public agency known to be associated with the project at the time it is submitted to the ~~Prevailing Wage Rate Unit~~Bureau. The request must identify the public agencies receiving a copy of the request.¶

(c) In addition to the written request, the requester must provide all documents, records, and other information necessary to enable the ~~commissioner~~Bureau to make the determination. This information includes, but is not limited to, copies of advertisements, project plans and specifications, development and disposition agreements, contracts, project financing information, loan agreements, and any other relevant information related to the project or proposed project. When the requester is not a public agency and information necessary for a determination is in the custody or control of a public agency, it is the requester's responsibility to obtain the information from the public agency and provide it with the request.¶

(2) The requester has a continuing duty to provide the ~~Prevailing Wage Rate Unit~~Bureau with all relevant documents, records and other information until a determination is made. If any information submitted in connection with a request is modified or superseded in any material respect after the request is made, the requester must promptly submit the updated information to the ~~Prevailing Wage Rate Unit.~~¶

~~(3) The commissioner~~Bureau.¶

(3) The Bureau will inform the requester if additional documents, records, or other information is necessary to enable the ~~commissioner~~Bureau to make the determination.¶

(4) If the ~~commissioner~~Bureau informs a requester that the ~~Prevailing Wage Rate Unit~~Bureau has not received all the documents, records, or other information necessary to make a determination, the request will remain pending for 90 calendar days. If the ~~Prevailing Wage Rate Unit~~Bureau does not receive the information the ~~commissioner~~Bureau deems necessary to make a determination while the request is pending, the requester may be required to submit a new request in order to obtain a determination.¶

(5) If a requester fails or refuses to provide documents, records, or other information necessary to enable the ~~commissioner~~Bureau to make the determination and the ~~commissioner~~Bureau has reasonable grounds to believe such documents, records, or other information exist, the ~~commissioner~~Bureau may inform the requester that the ~~commissioner~~Bureau is unable to issue a determination.¶

(6) The ~~commissioner~~Bureau's determination will be issued to the requester, with copies mailed to any public agencies identified on the request.¶

(7) The determination will include notice of the right of the requester, and of any person adversely affected or aggrieved by the determination, to a hearing, ~~pursuant to in accordance with~~ ORS 183.415, ~~OAR 137-003-0001,~~ ~~the supplemental provisions for hearing requests in~~ 3 to 183.470 and OAR Ch. 839, div. 50. ~~and ORS 279C.817(4).~~¶

(8)(a) After the ~~commissioner~~Bureau issues a determination, the requester or any public agency served with a copy of the determination may request that the ~~commissioner~~Bureau reconsider the determination.¶

(b) A request for reconsideration must be received within 15 calendar days of the date the determination was mailed. Requests must be submitted to the ~~Prevailing Wage Rate Unit~~Bureau. A request for reconsideration does not toll the time period for requesting a contested case hearing on the determination.¶

(c) The reconsideration request must be in writing and include the reason or reasons for the request and any documents in support of the request.¶

(d) The ~~commissioner~~Bureau will accept or reject the request within 15 business days of receipt of the request by the ~~Prevailing Wage Rate Unit.~~ ~~If the commissioner~~Bureau. If the Bureau does not accept the request within 15 business days, it is deemed denied.

Statutory/Other Authority: ORS 279C., 808, ORS 279C.817, ORS 651.060

Statutes/Other Implemented: ORS 279C.800, ~~279C.870~~17

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-025-0008

List of Planned Public Improvements and Cost Analysis ¶

(1) For purposes of this rule ~~the term, "Public improvement" has the same meaning as it does given that phrase in ORS 279A.010(cc).~~ ¶

(2) ~~Pursuant to ORS 279C.305, contracting agencies shall make every effort to construct public improvements at the least cost to the contracting agency.~~ ¶

~~(3)~~(a) Each public agency must prepare and file with the ~~commissioner~~Bureau a list of every public improvement known to the agency that the agency plans to fund during the subsequent budget period. The list must be submitted to the ~~Prevailing Wage Rate Unit~~Bureau not less than 30 days prior to the adoption of the agency's budget or before construction of a public improvement begins. If the agency revises its list after the adoption of its budget, the agency must file the revised list with the ~~commissioner~~Bureau at that time. ¶

(b) If a public agency intends to use its own equipment or personnel to perform construction work on a public improvement and the estimated value of the agency's construction work exceeds \$200,000 (or \$125,000 if the public improvement involves the resurfacing of highways, roads or streets at a depth of two or more inches), the agency must prepare and file with the ~~commissioner~~Bureau no later than 180 days before construction begins on the public improvement a cost analysis that shows that the agency's decision to use its own equipment or personnel conforms to the state policy that public improvements will be constructed at the least cost to public agencies. ¶

(4) ~~Copies of the lists of planned public improvements and cost analyses filed with the commissioner by public agencies as required by ORS 279C.305(2) are available to the public upon written request to the Prevailing Wage Rate Unit. The request must contain the following information:~~ ¶

~~(a) The name of the public agency;~~ ¶

~~(b) The name of any division, section or department of the public agency, if applicable; and~~ ¶

~~(c) The approximate date of the budget period for which the list or cost analysis was filed.~~ ¶

~~(5) The cost of supplying copies requested in section (4) of this rule will be calculated in accordance with OAR 839-030-0010, which sets forth the fees to be charged by the bureau when responding to requests for copies of public records.~~ ¶

~~(6)~~(3) To assist public contracting agencies in complying with the provisions of ORS 279C.305 and these rules, the ~~commissioner~~Bureau has prepared two forms, WH-118 and WH-119. The use of these forms by the public contracting agency is optional. However, the statutory requirements of 279C.305(2) are satisfied when these forms are completed and mailed to the Prevailing Wage Rate Unit. The forms should be completed as follows: ¶

(a) The Planned Public Improvement Summary form, WH-118, should be used to summarize all planned projects in the subsequent budget period, noting the project information requested on the form; ¶

(b) The Public Improvement Project Cost Analysis form, WH-119, should be completed for the purpose of demonstrating that a public agency's use of its own equipment or personnel results in the least cost to the agency. In developing cost comparisons, unit costs which can be substantiated by the agency's cost accounting system should be used. Contractor unit prices that reflect bidding data should also be used. ¶

~~(7)~~(4) A complaint alleging that a public agency has violated ORS 279C.305 must meet the following requirements in order to be considered by the ~~commissioner~~Bureau: ¶

(a) The complaint must be in writing, identify specific acts or omissions allegedly committed by a public agency in violation of ORS 279C.305, and be submitted to: ~~Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., #1045, Portland, OR, 97232.~~ ¶

(b) The complaint must be filed by a contractor, or a trade association of contractors acting on behalf of a member of the trade association, who was eligible to perform the construction work for which the public agency used its own equipment or personnel. ¶

(c) The complaint must be filed within one year after the contractor or trade association discovered or should have known that the violation occurred. ¶

(d) The complainant has paid a filing fee of \$250, which is refundable if investigation of the complaint finds substantial evidence of a violation. ¶

(e) In addition to the written complaint, the complainant must provide documents, records, and other information in support of the allegation that a violation has occurred. Such information may include, but is not limited to, copies of documents verifying the costs of labor, equipment, administration and overhead, tools and materials, or control testing, or any other contracts related to the public improvement; copies of plans, specifications, or

estimates related to the public improvement; copies of correspondence with the public agency concerning the public improvement; copies of cost estimating procedures used in preparing a cost analysis for the public improvement; and copies of any other relevant information which demonstrates that a violation of ORS 279C.305 or these rules has occurred.¶

[ED. NOTE: Forms referenced are available from the ~~Wage and Hour Division of the Bureau of Labor and Industries.~~

Statutory/Other Authority: ORS 279C.808, ORS 651.060(4)

Statutes/Other Implemented: ORS 279C.800-870, ~~OL Ch. 715 (2017)~~306

AMEND: 839-025-0038

RULE SUMMARY: Amends rules to delete outdated address and to clarify application.

CHANGES TO RULE:

839-025-0038

Use of Multiple Wage Rate Determinations on Projects ¶¶

(1) The ~~commissioner~~Bureau may authorize the use of multiple wage rate determinations on projects comprised of more than one construction type. For example, on a project consisting of the construction of both residential units and commercial space, the ~~commissioner~~Bureau may authorize residential wage rates to be paid for work performed in connection with the construction of the residential units pursuant to OAR 839-025-0037 and non-residential prevailing wage rates to be paid for work performed in connection with the construction of the commercial space.¶¶

(2) A public agency, developer or prime contractor may request authorization to use multiple wage determinations on a project. Requests for authorization to use multiple wage determinations on a project must be in writing, and describe all relevant details of the project or proposed project, and be submitted to: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St., #1045, Portland, OR, 97232.¶¶

(3) The requester will be advised if the ~~commissioner~~Bureau determines that multiple wage rate determinations are appropriate and may be used on a project.¶¶

(4) If the ~~commissioner~~Bureau determines that multiple wage rate determinations may be used on a project, continued authorization to use the multiple wage rate determinations shall be contingent upon compliance with the following requirements:¶¶

(a) The project/contract specifications must clearly delineate the portions of the project subject to each applicable wage rate determination;¶¶

(b) All applicable wage rate determinations must be posted at the site of work pursuant to the provisions of OAR 839-025-0033, with an explanation of the portions of the project to which each wage rate determination applies;¶¶

(c) The developer or prime contractor must establish adequate controls to ensure that all workers on the project are paid in accordance with the applicable wage rates; and¶¶

(d) Each and every contractor employing workers on the project must prepare, submit and maintain accurate time and payroll records to demonstrate compliance with all wage rate determinations applicable to the project.

Statutory/Other Authority: ~~ORS 651.060(4), 279C.808~~279C.808, ORS 651.060

Statutes/Other Implemented: ~~ORS 279C.800–279C.870~~17

REPEAL: 839-025-0750

RULE SUMMARY: Repeals obsolete rule.

CHANGES TO RULE:

~~839-025-0750~~

~~Residential Prevailing Wage Rate Determinations~~

~~(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determinations are the prevailing rates of wage for workers upon said public works projects for the periods of time specified:¶~~

~~(2) Copies of the rates referenced in section (1) of this rule are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies may also be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.~~

~~Statutory/Other Authority: ORS 279C.815~~

~~Statutes/Other Implemented: ORS 279C.815~~

AMEND: 839-050-0020

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-050-0020

Definitions ¶¶

Unless the context requires otherwise, the following definitions apply to OAR 839-050-0000 through 839-050-0445:¶¶

(1) "Administrative Law Judge" means the eCommissioner or an individual or a special tribunal designated by the eCommissioner to preside over any or all aspects of a contested case proceeding including motions, oral or written hearings, preparation of the Proposed Order and assistance in preparation of the Final Order. The Administrative Law Judge may or may not be an employee of the Agency, except that when a case involves a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the Administrative Law Judge or anyone appointed as a hearing officer or member of a special tribunal to hear the matter must be an employee of the Agency.¶¶

(2) "Administrative Prosecution Unit" means the section of the Bureau of Labor and Industries handling the administrative prosecution of contested case proceedings.¶¶

(3) "Administrative Prosecutor" means the Agency staff person assigned to prosecute contested case proceedings for the Agency and to handle all related matters, but does not include counsel for the Agency.¶¶

(4) "Agency" means the Bureau of Labor and Industries and any employee thereof, and includes the bureau when acting as the agent of another governmental entity, but for the purposes of these rules does not refer to the Administrative Law Judge, Contested Case Coordinator, or the eCommissioner.¶¶

(5) "Aggrieved person"¶¶

(a) For the purpose of proceedings involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, includes, but is not limited to, a person who believes that the person either:¶¶

(A) Has been injured by an unlawful practice or discriminatory housing practice; or¶¶

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.¶¶

(b) For the purpose of a complaint filed by the eCommissioner or the Attorney General, is a person on whose behalf the complaint is filed.¶¶

(c) A person who is, or was at any time, eligible to file a complaint under ORS 659A.820 or who is otherwise similarly situated.¶¶

(d) A person who files a complaint personally or through an attorney under ORS 659A.825.¶¶

(e) For the purpose of prevailing wage rate determinations, is an "aggrieved person" as defined at OAR 839-050-0445.¶¶

(6) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, including fiduciaries, mutual companies, trusts and unincorporated organizations, or an authorized officer or employee of a governmental agency who has been authorized by the partnership, corporation, association, organized group, or governmental agency to represent that entity during the contested case proceeding.¶¶

(7) "Charging document" means any document issued by the Bureau of Labor and Industries stating that any person, entity, or government agency has violated the laws within this Agency's jurisdiction and includes, but is not limited to:¶¶

(a) Formal Charges;¶¶

(b) Order of Determination;¶¶

(c) Notice of Intent to Revoke License;¶¶

(d) Notice of Intent to Deny License;¶¶

(e) Notice of Intent to Refuse to Renew a License;¶¶

(f) Notice of Intent to Place Name on List of Ineligibles;¶¶

(g) Notice of Intent to Assess Civil Penalties;¶¶

(h) Notice of Intent to Suspend or Revoke License or to Assess Civil Penalty in Lieu Thereof.¶¶

(8) "Chief Prosecutor" is the Administrative Prosecutor responsible for managing the Administrative Prosecution Unit. The Chief Prosecutor may also administratively prosecute cases on behalf of the Agency.¶¶

(9) "Claimant" means any individual who has filed a wage claim pursuant to ORS chapter 652 or 653 and who has assigned that claim to the eCommissioner.¶¶

(10) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.¶¶

(11) "Complainant" means an individual who has, or whose attorney has, filed a complaint pursuant to ORS

chapter 658 or 659A, chapters 652 and 653, chapter 279C, and any other laws or regulations or ordinances, enforced by the bureau as the agent of another governmental entity.¶

(12) "Contested Case Coordinator" means the Bureau of Labor and Industries staff person who receives and maintains all records filed with the Forum in contested cases, issues official contested case documents, and provides administrative support to the Forum and the Administrative Prosecution Unit.¶

(13) "Counsel" means an attorney who is in good standing with the Oregon State Bar or the Bar of another state who is granted permission by the Administrative Law Judge to appear in the matter pursuant to ORS 9.241 and Oregon Uniform Trial Court Rule 3.170. Oregon counsel who request permission for the appearance of an out-of-state attorney must participate meaningfully in the case in which the out-of-state attorney appears.¶

(14) "Counsel for the Agency" means the Oregon Attorney General, the Oregon Attorney General's designee, or separate counsel as authorized by the Oregon Attorney General pursuant to ORS 180.235(1).¶

(15) "Forum" means the Administrative Law Judge assigned to preside over the contested case proceeding and the Commissioner or Deputy Commissioner who signs the final order. ~~The address for filing all documents with the Forum is: Contested Case Coordinator, Bureau of Labor and Industries, 1045 State Office Building, 800 N.E. Oregon Street, Portland, OR 97232.~~¶

(16) "Good cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. "Good cause" does not include a lack of knowledge of the law, including these rules.¶

(17) "Issuance" means the act of sending out a document from the Forum. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the Forum.¶

(18) "Mail" means the act of sending, or an item sent, by a method or manner that results in a postmark on the item or proof of service of registered or certified mail.¶

(19) "Participant" means any party, including any person, aggrieved person intervening in a proceeding involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, or entity granted party status under OAR 137-003-0005, or the Agency.¶

(20) "Party" means:¶

(a) Any person, government agency, or entity upon whom a charging document has been served;¶

(b) Any person, government agency, or entity that has been granted party or limited party status under OAR 137-003-0005;¶

(c) Any aggrieved person intervening in a proceeding involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.¶

(21) "Postmark" means, for purposes of these rules:¶

(a) An imprint in black ink on the address side of the mail piece that shows the location of the United States Postal Service office that accepted custody of the mail, along with the state, zip code, and date of mailing, or¶

(b) A stamp indicating when postage was paid, when accompanied by a fully executed certificate of service indicating the document was mailed on the date postage was paid.¶

(22) "Service" means, for purposes of these rules, the method of sending documents and includes personal service, hand delivery, or registered, certified mail, or regular mail sent through the United States Postal Service.

Statutory/Other Authority: ORS chapter 183, ORS 651.060(4), ORS 653.065, ORS 658.407, ORS 658.820, 659A.805

Statutes/Other Implemented: ORS 279C.860, ORS 279C.865, ORS 652.332(3), ORS 653.065(1), ORS 658.115, ORS 658.407(3), ORS 658.820, 659A.845 & 659A.850, ORS Chapter 659A.885

AMEND: 839-050-0100

RULE SUMMARY: Amends rule to delete outdated address and to clarify application.

CHANGES TO RULE:

839-050-0100

Information for Contested Case Hearings ¶¶

The Forum will provide with a Notice of Hearing, a statement of information for all parties involved in a contested case hearing that includes:¶¶

(1) Instructions ~~that all filings, on how to submit~~ correspondence, and documents must be filed with the Contested Case Coordinator at this address: ~~Contested Case Coordinator, Bureau of Labor and Industries, 1045 State Office Building, 800 N.E. Oregon Street, Portland, OR 97232~~ and other filings to the Contested Case Coordinator;¶¶

(2) The information required under ORS 183.413(2) concerning the rights of the parties to the hearing;¶¶

(3) A statement that an order may be issued upon default if a party requesting a hearing fails to appear at the hearing and there is a prima facie case of unlawful practices or other violations; and¶¶

(4) A statement that the party's address as it appears in the Contested Case Coordinator's and the Agency's files, and to which the Notice of Hearing has been sent, will be the address used throughout the proceeding. A party whose address changes must immediately notify the Contested Case Coordinator, with copies to all other participants; otherwise, the Contested Case Coordinator, the Forum, and the Agency will presume the address on file to be correct.

Statutory/Other Authority: ORS chapter 183, ORS 651.060(4), ORS 652.332, ORS 653.065, ORS 658.407, ORS 658.820, ORS 659A.805

Statutes/Other Implemented: ORS 279C.860, ORS 279C.865, ORS 652.332(3), ORS 653.065(1), ORS 658.115, ORS 658.407(3), ~~658.820, 659A.845, 659A.850~~