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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 440
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIRECTOR'S OFFICE

FILED

01/22/2021 4:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopting rules related to Quarantine Time Loss Program administration.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/23/2021 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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Filed By:
Amy Hilgemann
Rules Coordinator

HEARING(S)

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

DATE: 02/16/2021

TIME: 9:00 AM - 10:00 AM

OFFICER: Fred Bruyns

ADDRESS: Virtual & Telephone
Conference Only

350 Winter Street NE
Salem, OR 97309-405

SPECIAL INSTRUCTIONS:

For virtual conference only:

Please join my meeting from your
computer, tablet or smartphone.

<https://global.gotomeeting.com/join/973765877>

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United States: +1 (408) 650-3123

Access Code: 973-765-877

NEED FOR THE RULE(S):

The permanent rule extends authority for DCBS to administer the Quarantine Time Loss Program beyond the temporary rule's expiration date of March 13, 2021, to successfully continue program administration. The temporary Quarantine Time Loss Program, sets program qualification criteria, and provides guidance and administrative

provisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Written exhibit from the Emergency Board work session, July 14, 2020. The document outlines required program elements and legislative intent.

Families First Coronavirus Response Act: Questions and Answers, U.S. Department of Labor. Accessed 8/18/2020. Compliance assistance to employers and employees on their responsibilities and rights under the Families First Coronavirus Response Act (FFCRA).

OAR 440-150-0001. Quarantine Time Loss Program temporary rule.

Section 1001, Consolidated Appropriations Act, 2021.

Statutory/Other Authority: ORS 82.010, ORS 293.550, ORS 705.135

Statutes/Other Implemented: ORS 293.55

https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx

These documents are available for public inspection upon request to the Department of Consumer and Business Services, 350 Winter Street NE, Salem, Oregon 97301. Please contact Amy Hilgemann, rules coordinator, 503-947-7872, amy.k.hilgemann@oregon.gov.

FISCAL AND ECONOMIC IMPACT:

The proposed rule is not expected to increase agency costs or workload. Possible impacts on stakeholders are described under "Statement of Cost of Compliance" below.

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. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

- a. The agency estimates that proposed rule changes will not affect costs to state agencies for compliance with the rule.
- b. The agency estimates that proposed rule changes will not affect costs to units of local government for compliance with the rule.
- c. The agency estimates that proposed rule changes will not affect costs to the public for compliance with the rule.

2. Cost of compliance effect on small business (ORS 183.336):

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Small businesses are not directly subject to the rule, as the program provides wage replacement for employees who have to isolate or quarantine due to COVID-19/SARS-CoV-2 exposure or symptoms.

Small businesses may be contacted by the program to verify an applicant's employment. Employees are responsible for completing an application, and subject to collections activities if the employee intentionally submitted fraudulent information to receive benefits.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

Small businesses are not subject to any administrative activities specific to the program. The program may contact individual employers to verify an applicant's employment, but the department does not intend to establish recordkeeping or reporting requirements specific to an employee's application or issued benefits.

c. Equipment, supplies, labor and increased administration required for compliance:

Small businesses are not subject to any required compliance activities.

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

Employer stakeholders, including small businesses, were directly involved in developing the program's elements, and had opportunity to ask questions regarding proposed temporary rule language. Interested parties will have an opportunity to participate in rule development at a forthcoming fiscal advisory committee meeting.

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

The proposed permanent rule is based on directives from the Emergency Board that are contained in the temporary rule. Required program elements were created by a stakeholder work group, who were kept apprised on program implementation, and the temporary rule prior to its filing. Work group members also received advance notice of the rule filing, and had the opportunity to ask questions regarding the proposed rule and the rulemaking process.

A fiscal advisory committee meeting will convene prior to the public hearing. Interested parties will have the opportunity to provide input on the proposed rule.

ADOPT: 440-150-0001

RULE SUMMARY: Establishes temporary Quarantine Time Loss Program, sets program qualification criteria, and provides guidance and administrative provisions.

CHANGES TO RULE:

440-150-0001

Quarantine Time Loss Program

(1) Definitions:¶

(a) "Employee" means a person working in Oregon and who was employed when they were directed to quarantine or isolate by a public health official or health care provider due to Coronavirus Disease 2019 (COVID-19), or experiencing COVID-19 symptoms and isolating while seeking medical diagnosis, and who is subject to income tax withholding requirements under ORS 316.162.¶

(b) "Department" means the Department of Consumer and Business Services.¶

(c) "Director" means the director of the Department. ¶

(d) "Health care provider" has the meaning given that term in ORS 433.443(1)(b). ¶

(e) "Local public health authority" has the meaning given that term in ORS 431.003.¶

- (f) "Quarantine" has the meaning given that term in ORS 433.001.¶
- (g) "Isolation or isolate" has the meaning given that term in ORS 433.001.¶
- (h) "Public health officer" means an individual employed by or under contract with a state or local public health authority or a tribe who has the authority to direct or order that an individual quarantine or isolate. ¶
- (i) "State public health authority" means the Oregon Health Authority, Public Health Division.¶
- (j) "Tribe" means a federally recognized Oregon tribe. ¶
- (k) "Qualified employee" means an employee eligible to receive quarantine time loss payments under sections (2) and (3) of this administrative rule.¶
- (2) Quarantine Time Loss Payments:¶
- (a) A qualified employee may claim quarantine time loss payments of \$120 per day, up to 10 days.¶
- (b) Payments are intended to reimburse the qualified employee for time missed when the employee would otherwise have worked. ¶
- (A) If an employee would otherwise have been scheduled to work for part of a day, it shall be considered a whole day scheduled for work for purposes of reimbursement under this section. ¶
- (B) A standard work week is five days a week, eight hours a day totaling 40 hours a week. Employees working a non-standard work week will calculate the hours scheduled for the non-standard work week and convert the days otherwise scheduled for work to a standard work week.¶
- (3) Qualifications. To qualify for Quarantine Time Loss payments, an employee must attest:¶
- (a) To being directed by a public health officer or health care provider to quarantine or isolate, or experiencing COVID-19 symptoms and isolating while seeking medical diagnosis;¶
- (b) To being in isolation or quarantine on or after the date the program begins;¶
- (c) To the employee's inability to work because the employee is in quarantine or isolated pursuant to section (3)(a) of this rule;¶
- (d) That the employee is not currently receiving or seeking time loss payments through an active worker's compensation claim related to the employee's COVID-19 status covering the same time period for which the employee is seeking payment under this rule;¶
- (e) That the employee is not seeking or receiving unemployment benefits covering the same time period for which the employee is seeking payment under this rule;¶
- (f) That the employee is not seeking or receiving any other benefit for time lost due to isolation or quarantine from any other Oregon program, or any other state's quarantine time loss program, or similar program, covering the same time period for which the employee is seeking payment under this rule;¶
- (g) That the employee is not seeking or receiving vacation leave, sick leave or any other form of paid leave provided by the employer covering the same time period for which the employee is seeking payment under this rule;¶
- (h) That the employee is not furloughed or laid-off from the employer covering the same time period for which the employee is seeking payment under this rule;¶
- (i) That the employee:¶
- (A) Had federal adjusted gross income of less than \$60,000 in tax year 2019 for individual filing status (\$120,000 federal adjusted gross income if filing joint filing status), as shown on a filed 2019 Oregon return, and, based on income received in tax year 2020 as of the date of application, estimates gross income of less than \$60,000 for individual filing status (\$120,000 gross income if filing joint filing status); ¶
- (B) Had federal adjusted gross income greater than \$60,000 in tax year 2019 for individual filing status (\$120,000 federal adjusted gross income if filing joint filing status) and, based on income received in tax year 2020 as of the date of application, estimates gross income of less than \$60,000 in tax year 2020 for individual filing status (\$120,000 gross income if filing joint filing status); or¶
- (C) Was not required to file an Oregon income tax return for tax year 2019, and, based on income received in tax year 2020 as of the date of application, estimates gross income of less than \$60,000 for individual filing status (\$120,000 gross income if filing joint filing status).¶
- (j) That the employee has provided notice to the employee's employer consistent with other leave policies of the

employer; and¶

(k) To one or more of the following:¶

(A) The employee's employer(s) claimed exemption from the paid emergency COVID-19 sick leave provisions of the Families First Coronavirus Relief Act (FFCRA) and has provided no COVID-19 sick leave benefits for the calendar year 2020 or 2021.¶

(B) The employee's employer(s) is not subject to the provisions of the FFCRA and has provided no COVID-19 sick leave benefits for the calendar year 2020 or 2021; or¶

(C) The employee has exhausted any COVID-19 sick leave benefits any of the employee's employers provided for quarantine or isolation purposes during calendar year 2020 or 2021.¶

(4) Application.¶

(a) A qualifying employee must apply to the Department of Consumer and Business Services, in the time, form and manner provided by the department and must:¶

(A) Identify the public health officer or health care provider issuing the directive to isolate or quarantine and;¶

(B) List the period of isolation or quarantine in the application;¶

(C) Provide the name of all employers for which Quarantine Time Loss payments are requested in the application; ¶

(D) Authorize the release of any information from a state or local public health authority, tribe, or health care provider necessary to verify information in the application; and¶

(E) Agree to reimburse the State of Oregon the amount of any Quarantine Time Loss payments received, if the Department of Consumer and Business Services determines upon audit that the information contained in the employee's application was inaccurate, false or fraudulent, the employee exceeded the income thresholds for the calendar year, or otherwise did not meet the qualifications to which the employee attested in the application. ¶

(b) An employee whose claim has been denied because the department determined that the employee is not a qualifying employee due to an incomplete application may reapply for program benefits. An employee whose application is denied due to exceeding income limits, or other reasons, will not be accepted. ¶

(5) Administration of the Quarantine Time Loss Program. ¶

(a) The Oregon Legislature appropriated \$30 million dollars to fund the Quarantine Time Loss program to be administered by the Department of Consumer and Business Services. The funds must be expended not later than December 31, 2021, under federal law. Claims for the Quarantine Time Loss program will be paid in the order received by the department until the funds are expended in full, after administrative costs are reimbursed.¶

(b) The Department of Consumer and Business Services may enter into an interagency agreement with any other state agency to assist it in carrying out the Quarantine Time Loss program. ¶

(c) Agencies who enter into an agreement with the department under section (5)(b) of this rule may recover administrative costs from the funds appropriated by the legislature to the program.¶

(d) The department and any agency with which it has an agreement under section 5(b) of this rule may keep information obtained as part of the Quarantine Time Loss program from public disclosure to the extent allowed under the Public Records Laws, ORS 192.311 to 192.431.¶

(6) Payment of benefits.¶

(a) An employee who has received Quarantine Time Loss payments previously is not eligible to reapply. ¶

(b) Benefits are payable only to the extent that moneys are available in the Quarantine Time Loss program for that purpose.¶

(7) Recovery of overpaid benefits.¶

(a) If the Director of the Department of Consumer and Business Services determines that an individual received any benefits under this rule to which the individual is not entitled because the individual, made or caused to be made a false statement or misrepresentation of a material fact, or failed to disclose a material fact, the individual is liable to repay the amount of benefits to the director for the Coronavirus Relief Fund.¶

(b) Any amount subject to recovery under this section may be collected by the director in a civil action against the individual brought in the name of the director. ¶

(c) In any case in which the director may bring a civil action for collection of benefits obtained through false

statements or misrepresentations, the director may instead issue a warrant for the amount to be repaid, together with the cost of collection from the date when the benefits were received, pursuant to ORS 705.175.

Statutory/Other Authority: ORS 82.010, ORS 293.550, ORS 705.135

Statutes/Other Implemented: ORS 293.55