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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471  
EMPLOYMENT DEPARTMENT

**FILED**

11/17/2017 8:14 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Updates To the Work Seeking Requirements for Unemployment Insurance Recipients When On a Temporary Layoff

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/22/2017 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:  
Cristina Koreski  
Rules Coordinator

HEARING(S)

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

DATE: 12/22/2017

TIME: 2:00 PM - 4:00 PM

OFFICER: Staff

ADDRESS: Oregon Employment  
Department Auditorium

875 Union St NE

Salem, OR 97311

SPECIAL INSTRUCTIONS:

Conference Call Line: 888-850-4523  
(Passcode # 440528)

NEED FOR THE RULE(S):

The Employment Department is amending the language in Oregon Administrative Rule (OAR) 471-030-0036(5) to reduce confusion by unemployment insurance recipients, employers, and agency staff and to encourage accurate reporting of information on the part of employers and workers.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes (ORS), available online at [www.oregonlegislature.gov](http://www.oregonlegislature.gov), or from the agency; and Oregon Administrative Rules, available online at [http://sos.oregon.gov/archives/Pages/oregon\\_administrative\\_rules.aspx](http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx), or from the agency.

FISCAL AND ECONOMIC IMPACT:

The department does not foresee any substantial fiscal or economic impact due to this rule change.

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)):

There is no impact on state agencies, units of local government or the public.

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:

The Employment Department does not have any reliable way to provide an estimate because this information has not been historically captured by the department.

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

There is no increase in costs for projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services, as a result of amending these rules.

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

There is no increase in costs for equipment, supplies, labor, or increased administration required for compliance as a result of amending these rules.

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

Small businesses were not specifically involved in the development of this rule. However, the department will continue to seek input from small businesses during the public comment and public hearing process.

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

The department does not have an Administrative Rule Advisory Committee. However, as specified under ORS 657.695, the department does have an Employment Department Advisory Council. We will continue to seek input during the public comment and public hearing stages of the process, and seek input from the Employment Department Advisory Council.

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AMEND: 471-030-0036

RULE SUMMARY: The Employment Department is amending subsection (5) of this rule. This change will maintain the length of time that a worker can be on a temporary layoff without having to seek work, while remaining in contact with their most recent employer at four weeks. The department is amending the definition in the rule for when that time frame may begin and end. This amendment to rule excludes the week in which the worker was laid off, and requires that the worker will earn at least the amount of their weekly benefit amount in the week in which the worker is expected to return to work. Therefore, these changes increase the potential amount of time workers in this scenario may qualify for Unemployment Insurance benefits from four weeks to up to six weeks.

The Employment Department requests public comment on whether other options should be considered for achieving the rule's substantive goals, while reducing the negative economic impact of the rule on businesses. The agency is holding a public hearing for this rule on Friday, December 22, 2017 from 2:00 p.m. to 4:00 p.m. in the Employment Department Auditorium (875 Union St NE, Salem, OR 97311). Anyone interested in providing the department feedback on the rule is welcome to attend the public hearing in person. If you are unable to attend the hearing in person but want to provide comments on the rule, you have the option of calling the conference line at 888-850-4523 (Passcode # 440528). Written comments may also be submitted via e-mail to OED\_Rules@oregon.gov by December 22, 2017 at 5:00 p.m. All comments received will be given equal consideration before the department proceeds with the permanent rulemaking.

#### CHANGES TO RULE:

471-030-0036

#### Benefits and Claims: Eligibility Factors ¶¶

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:¶¶

(a) If an individual is unable to secure the individual's customary type of work after contacting the potential employers in the labor market where benefits are being claimed, the Director may require the individual to seek less desirable but similar work or work of another type which the individual is capable of performing by virtue of experience and training.¶¶

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.¶¶

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in (1)(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.¶¶

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work he or she actually is seeking during all of the week except:¶¶

(a) An occasional and temporary disability for less than half of the week shall not result in a finding that the individual is unable to work for that week; and¶¶

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.¶¶

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, he or she is:¶¶

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and¶¶

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and¶¶

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and¶¶

(d) Physically present in the normal labor market area as defined by section (6) of this rule, every day of the week, unless:¶¶

(A) The individual is actively seeking work outside his or her normal labor market area; or¶¶

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the week, and no opportunity to work or referral to work was missed by such absence.¶¶

- (e) However, an individual with a permanent or long-term physical or mental impairment (as defined at 29 CFR 1630.2(h)) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.¶
- (f) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed if:¶
- (A) The individual has an opportunity to perform suitable work during the week and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity.¶
- (B) During the week, the individual is incarcerated during any days or hours customary for the type of work the individual is seeking.¶
- (i) "Incarcerated" means in custody at a city, county, state, or federal law enforcement or correctional facility to include any "arrest" as defined in ORS 133.005 or a similar law in another state or jurisdiction.¶
- (ii) When an individual is in an alternative sentencing facility operated pursuant to a community corrections plan that individual will not be considered unavailable for work solely because of their non-traditional custody. Alternative sentencing is defined by the jurisdiction responsible for supervision of the suspect or offender.¶
- (iii) "Incarcerated" does not include a "stop" as authorized under ORS 131.605 to 131.625.¶
- (iv) "Incarcerated" does not mean being involved in questioning by peace officers as part of an investigation where the individual is free to leave and not charged with a crime.¶
- (g) An individual will be considered not available for work if he or she fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.¶
- (h) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (g), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) shall be considered available for work only during weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.¶
- (A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;¶
- (B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR chapter 415.¶
- (i) An individual is not available for work in any week claimed under ORS 657.155 if the individual resides or spends the major portion of the week:¶
- (A) In Canada unless the individual is authorized to work in both the United States and Canada;¶
- (B) In a country not included in the Compact of Free Association with the United States of America; or¶
- (C) outside of the United States, District of Columbia or any territory or political division that is directly overseen by the United States federal government; except,¶
- (i) If the individual is the spouse or domestic partner of an individual stationed at a military base or embassy located outside the United States;¶
- (ii) Job opportunities exist on the military base or embassy for family members of those stationed there;¶
- (iii) The individual lives within a reasonable commuting distance to job opportunities at the military base or embassy; and¶
- (iv) The individual is willing to accept the conditions and terms of the available employment provided they are not inconsistent with ORS 657.195.¶
- (4) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care for that child acceptable to the individual shall be considered available for work if:¶
- (a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and¶
- (b) The individual is willing to and capable of working during such shift(s).¶

(5)(a) For purposes of ORS 657.155(1)(c) an individual is actively seeking work when doing what an ordinary and reasonable person would do to return to work. This section addresses the requirements for at the earliest opportunity. Unless otherwise directed by the director or an authorized representative of the employment department, an individual who is not on temporary layoff actively seeking work, as required under ORS 657.155(1)(c):¶

(a) Unless the individual is temporarily unemployed, as described in subsection (b), is not a union member or a member of a union, as described in subsection (d), nor is filing a continued claim for otherwise directed by the director or an authorized representative of the Employment Department, they must conduct at least five work seeking activities per week, with at least two of those being. Two of the five work seeking activities must be a direct contact with an employer who might hire the individual.¶

(A) Work seeking activities include but are not limited to registering for job placement services with the Employment Department, attending job placement meetings sponsored by the Employment Department, participating in a job club or networking group dedicated to job placement, updating a resume, reviewing the newspaper or job placement web sites without responding to a posted job opening, and making direct contact with an employer.¶

(B) Direct contact with an employer means making contact with an employer in person, by phone, mail, or electronically to inquire about a job opening or applying for job openings in the manner required by the hiring employer.¶

(b) For an individual on temporary layoff of four weeks or less with the individual is temporarily unemployed they are actively seeking work when they remain in contact with and being capable of accepting and reporting for any suitable work with their regular employer:¶

(A) If the individual had, as of the layoff date, been given a date to return to work or work for which remuneration is paid or payable work for their regular employer. The work the individual is returning to must be full time or pay an amount that equals or exceeds the individual's weekly benefit amount, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to.¶

(B) The department will consider the date the individual became temporarily unemployed as the last date the individual performed services for the employer. In the case of an individual still working four calendar weeks following the end of the week in which the temporary layoff occurred. The individual no longer meets the requirements of this subsection if four calendar weeks have passed following the week in which the temporary layoff occurred, therefore the individual must seek work consistent with the employer, the last date worked during the week in which the individual had earnings less than their weekly benefit amount.¶

(C) The period between the date the individual became temporarily unemployed and the date the individual returns to work as described in subsection (a) of this section in addition to the individual's regular employer, cannot be greater than four weeks.¶

(D) The individual does not meet the requirements of this subsection if will not consider the individual had not, as of the layoff date, been given a date to return to full-time work or work for which remuneration is paid or payable that equals or exceeds the individual's weekly benefit amount.¶

(c) For an individual on temporary layoff of more than four weeks to be temporarily unemployed if they were separated from their employer for reasons other than a lack of work, the work the individual is returning to is not with their most recent employer, or more than four weeks in length the individual's regular employer: such individual must immediately seek work consistent with the requirements of is unemployed is longer than the period described in subsection (a) of this section.¶

(d) For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union.¶

(e) For an individual who is filing a continued claim for the first week of an initial or additional claim:¶

(A) If the individual worked less than full time and remuneration paid or payable to the individual for services performed during the week is less than the individual's weekly benefit amount, each day the individual worked for the employer shall be considered a direct employer contact.¶

(B) An individual does not meet the requirements of this subsection if the individual performed no work for an employer during the first week of an initial or additional claim; therefore the individual must seek work consistent with subsection (a) of this section.¶

(f) In determining whether to modify the requirements in this section for an individual the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule. The Department shall provide a written copy of the work search requirements to the individual if the individual's work search requirements are modified.¶

(6)(a) An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria set forth in this section;¶

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.¶

(7) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in any state or country.

Statutory/Other Authority: ORS 657.610, ~~657.155~~

Statutes/Other Implemented: ORS 657.155, ~~657.190, 657.195, 657.260~~