

Presiding Officer's Report to Agency on Rulemaking Hearing

Date: January 5, 2018

To: Oregon Employment Department

From: David Genz

Subject: Presiding Officer's Report on Rulemaking Hearing

Hearing Date: December 22, 2017

Hearing Location: Employment Department Auditorium, 875 Union St NE, Salem, OR 97311

Title of Proposed Rules: Updates To the Work Seeking Requirements for Unemployment Insurance Recipients When On a Temporary Layoff; Aligning Unemployment Insurance Eligibility Requirements for School Employees with Federal Guidance; and Updates To the Drug and Alcohol Adjudication Policy Rules To Include Cannabis.

The rulemaking hearing on the proposed rules was convened at 2:08 PM. People were asked to sign registration forms if they wished to comment on the proposed rules and informed of the procedures for taking comments. They also were told that the hearing was being recorded.

Before receiving comment, I explained that the change to OAR 471-030-0036 is an update to the work seeking requirements for workers who are temporarily laid off; the changes to OAR's 471-030-0074 and 471-030-0075 aligns Unemployment Insurance eligibility requirements for school employees with federal guidance; and the changes to OAR's 471-030-0125 and 471-030-0126 are an update to the Unemployment Insurance eligibility requirements due to cannabis use.

Summary of Oral Comments

The following two people attended and provided oral comments:

Lori Sattenspiel, Oregon School Boards Association

Ms. Sattenspiel provided oral comments about OAR 471-030-0074 and OAR 471-030-0075. She reported that she was concerned about substitute employees that work in their school districts. She explained that their work, by nature, is fluid and unpredictable and that potential substitutes can and do reject work. Ms. Sattenspiel indicated that she had issues with wording in the rule.

Ms. Sattenspiel reported that she had concerns about the fiscal and economics in the rule preparation. She explained that based on information provided by a local ESD which has about 1,800 employees and manages a sub pool that even if only 10% applied for unemployment

benefits, the costs would be higher than what was estimated by the department in the Statement of Fiscal and Economic Impact. Ms. Sattenspiel also reported that the Southern Oregon ESD also operates a sub pool and had a drastic increase in UI costs from 2015 to 2017.

Ms. Sattenspiel also commented that she believes school districts will see a huge increase in the cost for record keeping. Ms. Sattenspiel reported that it varies from district to district how offers of work are documented; many utilize a spreadsheet but larger districts have automated systems. She stated that the definition provided by the department for Reasonable Assurance is problematic because school districts do not know what the definition means for a substitute and suggested a definition be included in the rule. Ms. Sattenspiel applauded the cleaning up the multiple employer portion of the rule for how an employer can tell how they are being charged because it was not clear in the past.

Ms. Sattenspiel also recommended a grammatical change under OAR 471-030-0075(1)(b) to include “ORS” in front of the statutory reference to “657.221”. With regard to OAR 471-030-0075(1)(c), she reported finding that the definition for economic conditions for offers ‘considerably less’ would be difficult to manage and that it will be unrealistic for districts to establish whether an employee will earn at least 90% of the amount they earned in the first academic year or term. Ms. Sattenspiel commented with regard to OAR 471-030-0075(2) that substitutes are not paid on annual basis, these workers are paid based on the work they performed during the applicable pay period.

Lastly, Ms. Sattenspiel asked the department to send the final rule so they can provide it to the field in order to enable districts to be handle UI claims with more consistency. She reported that districts want to do more contesting of UI claims and therefore need more need training in the field.

Senator Michael Dembrow, Senate District 23

Senator Dembrow applauded the department for work done on the rule. He reported that it is a subject he and a number of other legislators have worked on for a number of years. Senator Dembrow indicated he appreciated the different elements being laid out in the rule and of the specific wording for what constitutes Reasonable Assurance. He confirmed his appreciation for the factors taken into consideration for the balancing test to determine Reasonable Assurance. Senator Dembrow ended his testimony by thanking the department for the good work.

Written Comments

No parties submitted any written comments.

The hearing was adjourned at 4:03 PM. The public comment period closed at 5 P.M. on December 22, 2017.