

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form

FILED
6-29-17 11:19 AM
ARCHIVES DIVISION
SECRETARY OF STATE

Employment Department
Agency and Division
Cristina Koreski
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Address

471
Administrative Rules Chapter Number
(503) 947-1471
Telephone

RULE CAPTION

Align definition of "Reasonable Assurance" with federal guidance.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
8-23-17	2:00 p.m.	Employment Department Auditorium; 875 Union St NE, Salem, OR	Staff

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

471-030-0075

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 657.610

Other Authority:

Statutes Implemented:

ORS 657.167 and 657.221

RULE SUMMARY

This change in rule enables employees working for educational institutions who voluntarily quit work for good cause, as determined by the Employment Department, to be eligible for unemployment insurance.

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 business. The agency is holding a public hearing for this rule on Wednesday, August 23, 2017 from 2:00 p.m. - 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 August 23, 2017 at 5:00 p.m. All comments received will be given equal consideration before the department proceeds with the permanent rulemaking.

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.

<u>08-23-2017 5:00 p.m.</u>	<u>Cristina Koreski</u>	<u>cristina.koreski@oregon.gov</u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
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Employment Department
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471
Administrative Rules Chapter Number

Align definition of "Reasonable Assurance" with federal guidance.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending OAR 471-030-0075

Statutory Authority:

ORS 657.610

Other Authority:

Statutes Implemented:

ORS 657.167 and 657.221

Need for the Rule(s):

The Employment Department filed a temporary rule to make this change on February 27, 2017. This rule will expire on August 26, 2017 unless the department promulgates a permanent rule for the change. The change is needed to align Oregon's definition of the term "Reasonable Assurance" with recent federal guidance from the U.S. Department of Labor (U.S. DOL). The Employment Department uses the definition of the term in determining eligibility for unemployment insurance benefits for employees of educational institutions.

On December 22, 2016, the U.S. DOL issued Unemployment Insurance Program Letter (UIPL) 5-17. The letter specifies that if "the reason a claimant quit constitutes good cause under state law, then the claimant does not have a reasonable assurance of employment in the next academic year or term, or portion thereof." Prior to the filing of the temporary rule, Oregon Administrative Rule 471-030-0075(4) indicated the opposite, that voluntarily quitting for good cause did not end reasonable assurance.

This rule affects employees of educational institutions who the Employment Department determines voluntarily quit with good cause and their employers.

Documents Relied Upon, and where they are available:

UIPL 5-17. A copy of the letter is available at http://wdr.doleta.gov/directives/attach/UIPL/UIPL_5-17_acc.pdf or from the agency.

Oregon Revised Statutes, available online at www.oregonlegislature.gov or from the agency; and Oregon Administrative Rules, available online at: http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx or from the agency.

Fiscal and Economic Impact:

Educational institutions and their employees, both public and private, will be subject to the rule. But only educational institutions, and their employees who quit work for good cause, will be impacted. The Employment Department is unable to reliably determine how many educational institutions the change in rule will impact but estimates that it will impact approximately 140 employees per biennium at an approximate cost of \$760,500 per biennium in additional unemployment insurance (UI) benefits being paid. The large majority of these payments however would be resulting from employers who reimburse UI benefit payments dollar for dollar; therefore the department only anticipates minimal net impact to the UI Trust Fund. Only payments resulting from UI tax-paying private institutions would result in net charges to the UI Trust Fund. The majority of the \$760,500 will be funded by UI tax-reimbursing public institutions.

Statement of Cost of Compliance:

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

Other than the impact to educational institutions identified in the Fiscal and Economic Impact Statement on this filing, there is no additional cost of compliance for state agencies, units of local governments or the public.

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

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

Small businesses and types of businesses and industries with small businesses that are private educational institutions could be affected by this rule. The Employment Department does not have any reliable way to provide a specific number, but estimates there is a very small number, if any, of businesses and types of business and industries with small businesses which would be subject to the rule.

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 the adoption of this rule.

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

There is no increase in costs for equipment, supplies, labor and increased administration required for compliance as a result of the adoption of this rule.

How were small businesses involved in the development of this rule?

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.

Administrative Rule Advisory Committee consulted?: No

If not, why?:

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 which includes an equal number of employer and employee representatives.

In addition, since the filing of the temporary rule, the department engaged in extensive conversations with stakeholders who might be impacted by this rule and did not hear any significant concerns. We will continue to seek input from stakeholders during the public comment and public hearing stage for the permanent rule, and seek input from the Employment Department Advisory Council.

08-23-2017 5:00 p.m.	Cristina Koreski	cristina.koreski@oregon.gov
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Rule Caption: Align definition of “Reasonable Assurance” with federal guidance

Purpose: The Oregon Employment Department is filing a temporary rule to align the definition of the term “Reasonable Assurance” with federal guidance.

Please note: **Boldfaced type** in an amended section is new language; *[italic and bracketed]* is existing rule language to be omitted.

471-030-0075

"Reasonable Assurance" Defined

(1) With respect to the application of ORS 657.167 and 657.221, "reasonable assurance" means a written contract, written notification or any agreement, express or implied, that the employee will perform services immediately following the academic year, term, vacation period or holiday recess which is in the same or similar capacity, unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

(2) As used in this rule, "substantially less" means:

(a) The gross weekly wage offered is less than 90% of the gross weekly wage earned in the prior academic year or term which preceded the weeks of unemployment or,

(b) The average number of hours the individual will be working is less than 90% of the average number of hours worked in the prior academic year or term, which preceded the weeks of unemployment;

(c) For the purpose of this section, employer paid benefits are not to be considered.

(3) With respect to (1) of this rule, "same or similar capacity" refers to the type of services provided: i.e., a "professional" capacity as provided by ORS 657.167 or a "nonprofessional" capacity as provided by 657.221.

(4) **An individual who voluntarily leaves work for good cause, as defined under OAR 471-030-0038, does not have [R]reasonable assurance with the employer from whom the person voluntarily left** *[cannot be ended or abated by any unilateral action of the individual. A decision to quit work, even for good cause, and even if the employer accepts the resignation, does not end or abate reasonable assurance].*

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.167 & 657.221

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 1-1984, f. & ef. 3-21-84; 1DE 3-1985, f. & ef. 12-16-85; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 13-2006(Temp), f. 12-1-06, cert. ef. 12-3-06 thru 6-1-07; ED 1-2007, f. & cert. ef. 1-29-07

Links:

Rules listing: <http://www.oregon.gov/EMPLOY/Agency/Pages/Pending-Rules.aspx>

The agency is holding a public hearing for this rule on Wednesday, August 23, 2017 from 2:00 p.m. - 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 August 23, 2017 at 5:00 p.m. All comments received will be given equal consideration before the department proceeds with the permanent rulemaking.