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**PERMANENT ADMINISTRATIVE ORDER**

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CHAPTER 471

EMPLOYMENT DEPARTMENT

**FILED**

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FILING CAPTION: Amending, adopting, repealing Paid Leave Oregon administrative rules relating to contributions, recovery and self-employed.

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**RULES:**

471-070-0010, 471-070-0470, 471-070-2010, 471-070-2030, 471-070-3000, 471-070-3040, 471-070-3310, 471-070-5200, 471-070-5210, 471-070-8520, 471-070-8530, 471-070-8540

AMEND: 471-070-0010

RULE TITLE: Definitions

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to define a "volunteer" for purposes of who would not be considered an employee for Paid Leave Oregon purposes.

**RULE TEXT:**

(1) "Paid Leave Oregon" means the Paid Family and Medical Leave Insurance program as described under ORS chapter 657B.

(2) "Volunteer" as used in ORS 657B.010(13)(b)(E), means an individual who performs services for a public agency or private non-profit organizations for civic, charitable, or humanitarian reasons, without promise, expectations or receipt of compensation for services rendered.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.340, 657B.010

ADOPT: 471-070-0470

RULE TITLE: Wages: Paid Leave Oregon Benefits

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Clarifies that Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, is not considered wages for Paid Leave Oregon contribution purposes.

RULE TEXT:

Paid Leave Oregon benefits issued by the Employment Department, employer or administrator through an approved equivalent plan, are not wages.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.010

AMEND: 471-070-2010

RULE TITLE: Self-employed: Election Requirements and Effective Date

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to clarify which year of the tax return needs to be submitted with the election application.

RULE TEXT:

(1) An eligible self-employed individual may apply to elect coverage under the Paid Family and Medical Leave Insurance program at any time.

(2) A notice to elect must be in writing and submitted online or in another method approved by the department. To be reviewed, the notice must be complete and include:

(a) Information about the individual applying for elective coverage, including:

(A) First and last name;

(B) Social Security Number or Individual Taxpayer Identification Number; and

(C) Address and contact information.

(b) Information on the individual's business, when applicable, including:

(A) Business Identification Number;

(B) Business name; and

(C) Business address and contact information.

(c) The individual's total taxable income from self-employment for a prior tax year, as applicable under section (3) of this rule;

(d) Documentation verifying:

(A) The individual's identity and

(B) The individual's taxable income from self-employment, including but not limited to, income reported to Oregon on the personal income tax return from a prior tax year, as applicable under section (3) of this rule.

(e) An agreement to:

(A) Pay contributions for a period of not less than three years;

(B) Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage, including but not limited to, a copy of the Oregon personal income tax return annually; and

(C) Provide additional information to confirm eligibility for elective coverage, if requested by the department;

(f) Acknowledgement of the conditions for termination of self-employed elective coverage established in OAR 471-070-2170, including, but not limited to, the condition that coverage cannot be terminated until coverage has been in effect for at least three years.

(3) If the eligible self-employed individual elects coverage:

(a) In the first quarter of the calendar year (January through March), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the tax year immediately prior to the last tax year.

(b) In quarters two through four of the calendar year (April through December), the individual must provide the tax return required to be filed with the Oregon Department of Revenue for the last tax year.

Example 1: Kaja elects to have self-employment coverage in February of 2024. Kaja must provide a copy of their 2022 Oregon personal income tax return because it is within the first quarter of the calendar year.

Example 2: Jackie elects to have self-employment coverage in June of 2024. Jackie must provide a copy of their 2023 Oregon personal income tax return because it is after the first quarter of the calendar year.

(4) The department may deny a notice to elect if:

- (a) The notice does not include the required information and documentation in accordance with this rule or
- (b) The self-employed individual does not meet the eligibility requirements in OAR 471-070-2005 or other applicable law.
- (5) Approved elective coverage becomes effective on the date the complete notice to elect was received with the department.

[Publications: Contact the Oregon Employment Department for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule.]

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.130

AMEND: 471-070-2030

RULE TITLE: Self-employed: Contribution Payments and Reporting Requirements

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to clarify which year of the tax return is needed.

RULE TEXT:

(1) A self-employed individual who elects coverage under ORS 657B.130 must contribute to the Paid Family Medical Leave Insurance (PFMLI) Trust Fund in an amount that is equal to 60 percent of the total contribution rate described in OAR 471-070-3010 up to an annual taxable income from self-employment that is equal to the calendar year maximum wage amount described in OAR 471-070-3010.

(2) Total contribution payments will be based on the individual's total taxable income from self-employment from the tax return required to be filed for a prior tax year, per OAR 471-070-2010 and generally shall be divided into four quarterly contribution payments. If a contribution is due for only part of a quarter, the contribution amount shall be prorated based on the number of calendar days that the elective coverage is in effect.

Example: Sally, a self-employed individual, elects PFMLI coverage on May 1, 2024. Sally earned \$80,000 in taxable income from self-employment in 2023. Assuming a total contribution rate of one percent, Sally's four quarterly contribution amounts due are calculated as follows:

First quarterly payment, period of May 1 through June 30 (second quarter calendar year 2024), will be \$80.44 [(\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters) x 61/91 calendar days in the quarter].

Second quarterly payment, period of July 1 through September 30 (third quarter calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

Third quarterly payment, period of October 1 through December 31 (fourth quarter calendar year 2024), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

Fourth quarterly payment, period of January 1 through March 31 (first quarter calendar year 2025), will be \$120 (\$80,000 taxable income from self-employment x 0.01 total contribution rate x 0.6 self-employed contribution percentage / four quarters).

(3) Quarterly contributions shall be due and payable in accordance with OAR 471-070-3030.

(4) A self-employed individual who fails to timely pay contributions as required by sections (1) through (3) of this rule is delinquent. Any individual found to be delinquent in the payment of contributions is subject to the penalties as specified in ORS 657B.320 and also may be assessed an additional penalty as provided in ORS 657B.910.

(5) The date of receipt of contributions transmitted through the mail or private express carrier shall be determined as provided in ORS 293.660. The date of receipt shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law.

(6) The self-employed individual must annually report information and provide documentation provided in subsection (a) and (b) of this section the department deems necessary for the administration of elective coverage.

(a) Except as specified in subsection (b) of this section, a self-employed individual must annually report to the department the prior year's taxable income from self-employment required to be filed and provide their Oregon personal income tax return to the department on or before April 30 of each year.

(b) If a self-employed individual files their Oregon personal income tax return on extension, the department will use the information on the individual's last tax return filed and provided to calculate quarterly contribution payments. The department will adjust the quarterly contribution payments due when the prior year's tax return on extension is filed and provided to the department. The self-employed individual must report to the department the prior year's taxable

income from self-employed filed on extension and provide their Oregon personal income tax return on or before October 31 of each year.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 293.660, 657B.130, 657B.150

AMEND: 471-070-3000

RULE TITLE: Contributions: Definitions

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to remove the definition of "legal fees" as this will now be included in OAR 471-070-3010 and will no longer be limited to contributions only.

RULE TEXT:

"Maximum wage amount" means the maximum employee wages per employer subject to Paid Family and Medical Leave Insurance (PFMLI) contributions per calendar year

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.150

AMEND: 471-070-3040

RULE TITLE: Contributions: Withholding of Employee Contributions

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to clarify when the rounding shall occur when calculating the Paid Leave Oregon employer and employee contributions.

RULE TEXT:

(1) An employer may not deduct from the employee's subject wages more than the maximum allowable amount of 60 percent of the total contribution rate described in OAR 471-070-3010 for a pay period rounded to the nearest cent. When rounding, any number with the last figure five or greater is rounded up, while numbers less than five are rounded down.

(2) When performing the calculation described in section (1) of this rule, the intermediate steps shall not be rounded, only the final step shall be rounded to the nearest cent.

Example: On February 2, 2023 Jennifer earned \$1,769.89 in subject wages for the pay period. The employer calculates Jennifer's contributions by multiplying the subject wages by the total contribution rate of 1% (not rounded) by the employee contribution rate of 60% (rounded to the nearest cent). The total potential contribution is \$17.6989 ( $\$1,769.89 \times 0.01 = \$17.6989$ , not rounded). Jennifer's employee portion of the potential contribution is \$10.62 ( $\$17.6989 \times 0.60 = \$10.61934$ , rounded to the nearest cent is \$10.62). The employer's contribution (if a large employer) is \$7.08 ( $\$17.6989 \times 0.40 = \$7.07956$ , rounded to the nearest cent is \$7.08).

(3) If an employer fails to deduct the maximum allowable employee share of the contribution rate for a pay period, the employer is considered to have elected to pay that portion of the employee's contribution that the employer failed to deduct. The employer is liable to pay that portion of the employee share under ORS 657B.150(5) or ORS 657B.210(5) for that pay period, if the failure to deduct the contribution is not corrected within the quarter. The employer may deduct from the employee's subject wages the amount they failed to deduct within the quarter.

(4) Notwithstanding section (3) of this rule, when there are insufficient employee wages to collect the employee's share of the contribution for a pay period, the employer may deduct the employee's share of the uncollected contribution from future wages or have the employee pay the contribution amount due to the employer before the end of the next quarter. The employer may collect the employee's share of uncollected contributions until the end of the next quarter following the quarter in which the employee had insufficient wages for the contribution. The total amount deducted from any paycheck may not exceed 10 percent of the employee's gross wages earned in the pay period covered by the paycheck.

(5) An employer may elect to pay the employee's contribution, in whole or in part, and must provide a written notice, policy, or procedure to the employee or enter into a collective bargaining agreement with the employee specifying that the employer is electing to pay the employee contribution, making the employer liable for that portion of the employee contribution. The employer must give written notice of an update to its notice, policy, or procedure or amendment to its collective bargaining agreement to the employee at least one pay period prior to any reduction by the employer of the employee contribution amount that the employer previously elected to pay.

(6) If an employer has elected to pay, in whole or in part, the employee portion of contributions as stated in section (5) of this rule, the employer may not deduct the amount the employer elected to pay from a future paycheck of the employee.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.150, 657B.210



REPEAL: 471-070-3310

RULE TITLE: Contributions: Application of Payments

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Repealing this rule as the content will be added to a new administrative rule relating to all debts owing under ORS chapter 657B and not just contribution debt.

RULE TEXT:

- (1) "Designated payments" are payments received by the department specifying a specific quarter(s) or distraint warrant.
- (2) "Undesignated payments" are payments received by the department that are not specified for a specific quarter(s) or distraint warrant.
- (3) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an employer for Paid Family and Medical Leave Insurance (PFMLI) contributions; and legal fees (as defined in OAR 471-070-3000), penalties and interest related to those PFMLI contributions; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated Payments" or "Undesignated Payments" and will be credited to the employer's account in the following order of priority:
  - (a) Undesignated Payments:
    - (A) To the oldest unwarranted unpaid quarter balance in the following order:
      - (i) Penalties;
      - (ii) Interest; and then
      - (iii) PFMLI Contributions.
    - (B) After the payment amounts under subsection (a)(A) of this rule have been applied, any remaining amounts shall then be credited to the most recent unpaid distraint warrant in the following order:
      - (i) Legal Fees;
      - (ii) Penalties;
      - (iii) Interest; and then
      - (iv) PFMLI Contributions.
  - (b) Designated Payments:
    - (A) Legal Fees;
    - (B) Penalties;
    - (C) Interest; and then
    - (D) PFMLI Contributions.
- (4) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (3) of this rule.
- (5) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.
- (6) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of sections (4) and (5) of this rule.
- (7) Notwithstanding any instructions to the contrary by or on behalf of the employer, payments will be applied in the manner specified in this rule.
- (8) Credit balances will be treated as payments for purposes of this rule.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.150, 657B.120, 657B.320, 657B.430, 657B.910

ADOPT: 471-070-5200

RULE TITLE: Due Dates for Balances Owed to the Department

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Explains that unless otherwise specified by law, balances owed to Paid Leave Oregon are due as of the date the decision causing the balance owed becomes final. Defines "final" which means a decision made by the department is final unless an individual files an appeal within the allowed appeal timeframe.

RULE TEXT:

(1) Unless otherwise specified in statute or administrative rule, balances owed to the department under ORS chapter 657B are considered due and payable as of the date the decision causing the balance due becomes final.

(2) "Final" means a decision made under this chapter for which the timeframe to request a hearing as described in OAR 471-070-8005 has expired, unless a timely request for a hearing with the department regarding the decision has been filed in which case "final" means when the decision issued following the hearing, or any appeal of the hearing, has been issued and the time period to further appeal that decision has passed without a timely appeal being filed.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.340

ADOPT: 471-070-5210

RULE TITLE: Application of Payments

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Clarifies the order in which payments are applied to all outstanding debts under ORS chapter 657B. Similar language for contribution debts was previously listed in OAR 471-070-3310; however, that rule is being repealed so the order applies to all outstanding debts.

RULE TEXT:

(1) As used in this administrative rule:

(a) "Designated payments" are payments received by the department specifying a specific debt, distraint warrant, or quarter(s) in the case of contributions.

(b) "Legal fees" means fees attributed to the recording or processing of a distraint warrant on behalf of the department for the purpose of collecting amounts owed under ORS chapter 657B pursuant to ORS 657B.300, search fees attributed to garnishments issued to financial institutions pursuant to ORS 18.790, and fees charged by the Department of Revenue pursuant to ORS 293.250.

(c) "Principal" means any balance owing under ORS chapter 657B, excluding legal fees, penalties, and interest.

(d) "Undesignated payments" are payments received by the department that are not specified for a debt, distraint warrant, or quarter(s) in the case of contributions.

(2) Except as otherwise provided by statute, or as directed by a court of competent jurisdiction, payments made to the department by or on behalf of an individual or employer for amounts owed under ORS chapter 657B; legal fees, and related penalties; in accordance with the provisions of ORS chapter 657B shall be identified by the department as either "Designated payments" or "Undesignated payments" and will be credited to the individual's or employer's account in the following order of priority:

(a) Undesignated payments:

(A) To the oldest unwarranted unpaid balance in the following order:

(i) Penalties;

(ii) Interest; and then

(iii) Principal.

(B) After the payment amounts under subsection (a)(A) of this section have been applied, any remaining amounts shall then be credited to the most recent unpaid warranted balance in the following order:

(i) Legal Fees;

(ii) Penalties;

(iii) Interest; and then

(iv) Principal.

(b) Designated payments:

(A) Legal Fees;

(B) Penalties;

(C) Interest; and then

(D) Principal.

(3) The department may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (2) of this rule.

(4) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the director granted under ORS chapter 657B.

(5) The employees listed in OAR 471-070-0550 may act on behalf of the director for purposes of section (3) and (4) of this rule.

(6) Notwithstanding any instructions to the contrary by or on behalf of the individual or employer, payments will be applied in the manner specified in this rule.

(7) Credit balances will be treated as payments for the purposes of this rule.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.040, 657B.120, 657B.150, 657B.240, 657B.300, 657B.320, 657B.330, 657B.370, 657B.430, 657B.910, 657B.920, 293.250

AMEND: 471-070-8520

RULE TITLE: One-Percent Penalty

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to change "final" to "due" to describe when the penalty is due.

RULE TEXT:

(1) If an employer has failed to file or complete all required reports or pay all required contributions for the calendar year as described in 471-070-3030, the department shall assess the penalty authorized by ORS 657B.910 on the Paid Family and Medical Leave Insurance (PFMLI) subject wages. The department shall send notice of the assessment of such penalty to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records on or before October 20 of the year. The penalty shall become due on November 10 immediately following the assessment.

(2) On or after the date of the assessment, but prior to November 10 immediately following the assessment, the employer may request waiver of the penalty based on good cause as defined in OAR 471 070 8530.

(3) If an employer makes a request for waiver of the penalty within the time prescribed in section (2) of this rule, the department shall make a decision, either granting or denying the waiver, and mail notice of the decision to the employer's last known address or electronically when permitted, if the employer has opted for electronic notification, as shown in the department's records. If, prior to November 10 immediately following the assessment, the department determines that the employer had good cause for the failure to file all reports or pay all contributions due by September 1, the department shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish good cause prior to November 10 immediately following the assessment, the department shall deny the request for waiver. If the request for waiver is denied, the department shall notify the employer that a request for a contested case hearing may be filed within 20 calendar days after the date that the penalty waiver decision is sent to the employer.

(4) Hearings held and administrative law judge decisions issued pursuant to section (3) of this rule shall be in accordance with the provisions of chapter 137, division 3 of the Oregon Administrative Rules that have been adopted for the PFMLI program.

(5) Judicial review of administrative law judge decisions issued pursuant to this rule shall be as provided for review of orders in contested cases under ORS 183.310 through 183.550. The director is designated as a party for the purposes of hearings under this rule.

(6) Upon motion of the director or upon application of an interested employer, the director may reconsider a penalty imposed under ORS 657B.910 irrespective of whether it has become final:

(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts not previously known to the director;

(b) A new decision issued after reconsideration shall be subject to hearing and judicial review in accordance with this rule.

(7) A request for waiver of the penalty for good cause must be in writing. The date of any request for waiver under this rule shall be:

(a) The postmarked date on the request, if mailed;

(b) The date specified in OAR 471-070-0850, if electronically filed; or

(c) In the absence of a postmark, submittal date or machine imprinted date, the most probable date of mailing as determined by the director.

(8) The employees listed in OAR 471-070-0550 may act on behalf of the director for the purposes of sections (1), (2) and (3) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.910

AMEND: 471-070-8530

RULE TITLE: Good Cause for Failure to File Reports or Pay Contributions

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to expand when Paid Leave Oregon will find an employer had "good cause" for failure to file combined payroll reports or pay paid leave contributions to include payments and reports incorrectly filed with another jurisdiction.

RULE TEXT:

(1) As used in ORS 657B.910 and 657B.920 and OAR 471-070-8520, good cause for failure to file all required reports or to pay all contributions due will be found when the employer establishes, by satisfactory evidence, that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required report or paying the contribution due.

(2) In determining good cause under section (1) of this rule, the director may consider all circumstances, but shall require at a minimum, that the employer:

(a) Prior to the date the report or contributions were due, gave notice to the department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required report or paid the contributions due no later than seven calendar days after the date determined by the director to be the date the factors or circumstances causing the delay ceased to exist;

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence;

(d) Provided an official police report, or other documentation acceptable to the director or an authorized representative, that was made within 20 calendar days of a criminal act, or discovery of the act, if the delay was due to a criminal act by any party; and

(e) Provided copies of timely filed reports and proof of all related payments to another jurisdiction, if the delay was due to making contributions to the incorrect jurisdiction. Good cause will be considered if, within 30 calendar days of the date the department or employer determines the contributions are due to the Paid Family and Medical Leave Insurance Trust Fund instead of another jurisdiction, the employer filed the required report and paid the contributions due.

(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause.

(4) In applying sections (1) and (2) of this rule, failure to notify the department of an updated mailing address shall not constitute good cause.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.910, ORS 657B.920

AMEND: 471-070-8540

RULE TITLE: Penalty Amount When Employer Fails to File Report

NOTICE FILED DATE: 05/30/2023

RULE SUMMARY: Amends the administrative rule to specify the penalty is determined final within 20 calendar days from the date the department assessed the late filing penalty, unless the employer requests a timely hearing before the 20 calendar days.

RULE TEXT:

(1) If an employer fails to file all required reports within the time period described in ORS 657B.920(2), the department may assess a late filing penalty in addition to any other amounts due.

(2) The penalty shall be 0.02 percent of the employer's employees total Paid Family and Medical Leave Insurance (PFMLI) subject wages for the late report rounded to the nearest \$100. If the penalty is calculated to be less than \$100, the amount will be the minimum of \$100.

Example: Athena's Yoga and Piyo Studio has 20 employees with total PFMLI subject wages for first quarter of 2024 of \$120,000. Athena does not file the 2024 Oregon Quarterly Tax Report for the first quarter. The department sends a written notice warning on May 10, 2024, to Athena's Yoga and Piyo Studio, but they do not correct the deficiency by filing the needed report. A penalty of \$24 ( $0.0002 \times \$120,000$  PFMLI subject wages) is calculated by the department. But since the minimum penalty is \$100, the penalty imposed by the department is \$100.

(3) The penalty assessment becomes final 20 calendar days from the date on which the department assessed the late filing penalty, unless the employer files a timely request for hearing as described in OAR 471-070-8005.

STATUTORY/OTHER AUTHORITY: ORS 657B.340

STATUTES/OTHER IMPLEMENTED: ORS 657B.920