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

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
10/14/2019 10:33 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating rule to allow job postings to be available immediately when posted by validated employers

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2019 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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875 Union St NE
Salem, OR 97311

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: 11/22/2019

TIME: 2:00 PM - 4:00 PM

OFFICER: David Genz

ADDRESS: Employment Department
Auditorium

875 Union St NE
Salem, OR 97311

SPECIAL INSTRUCTIONS:

888-850-4523 (Passcode # 440528)

NEED FOR THE RULE(S):

The Employment Department filed a temporary rule to make this change on June 20, 2019. This rule will expire on December 17, 2019 unless the department promulgates a permanent rule for the change. The temporary rule allows validated employers, business owners who have provided supporting information to demonstrate they are operating a legitimate business, to enter self-referral job listings that may display immediately to the public without review by WorkSource Oregon (WSO) staff. Making the temporary change permanent will enable WSO staff to use their time assisting employers that opt for our enhanced recruitment services.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Administrative Rule 471-020-0035:

<https://secure.sos.state.or.us/oard/view.action?ruleNumber=471-020-0035>

FISCAL AND ECONOMIC IMPACT:

The Employment Department does not anticipate any external fiscal or economic impact due to this change in rule. While the department does anticipate internal impact, any administrative benefits from the impact will be reallocated

into service for our customers.

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) There will be no cost to comply for any state agencies, units of local government, or members of the public.

(2) (a) There will be no cost to comply for any small businesses.

(b) There will be no additional reporting, record keeping or administrative action necessary for small businesses as a result of this change in rule.

(c) There will be no cost of professional services, equipment supplies, labor or increased administration required to comply with the rule.

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

Small businesses will benefit from this rule as it will allow staff at the local WorkSource Centers to have more time to provide enhanced business services to businesses that do not have the staff or human resources departments to perform focused recruitments. While the department did not consult with any specific small businesses on the proposed amendment to this rule, the department will seek input from small businesses during the public comment period and at the public hearing.

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

The department did not consult with an administrative rule advisory committee. The department opted not to conduct one because, as specified under Oregon Revised Statute (ORS) 657.695, the department has an Employment Department Advisory Council. By law, this council serves to assist in the effective development of policies and programs with respect to unemployment insurance and employment service and is composed of men and women representing employers and employees in equal numbers, and representatives of the public who shall elect their chairperson. The department will consult with the council and will continue to seek input from stakeholders during the public comment period and at the public hearing. During the temporary rule implementation affected employers were contacted about this change and provided opportunity to comment. They will be invited to provide comment again through this process.

AMEND: 471-020-0035

RULE SUMMARY: This amendment adds the phrase "and job listings entered by validated employers, business owners who have provided supporting information to demonstrate they are operating a legitimate business," to part (5). This provides clarity of when job listings may be immediately made available to customers.

Additionally this amendment removes part (7) as this rule would no longer be applied retroactively to part (5).

CHANGES TO RULE:

471-020-0035

Job Listings ¶

(1) All job listings accepted by authorized Employment Department or partner staff must:¶

(a) Be for an identifiable current job opening, or an identifiable future job opening;¶

(b) Establish an employer-employee relationship;¶

(c) Pay at least minimum wage, unless exempted by state or federal law; and¶

(d) Not contain terms or conditions of employment contrary to state or federal law.¶

(2) The Employment Department will not list job listings replacing workers that are out of work due to a labor dispute, as defined in OAR 471-030-0097.¶

(3) No job listing will be accepted that charges a fee to candidates, unless:¶

(a) The fee is for a drug test and is charged only to individuals who have been offered work contingent on passing the drug test;¶

(b) The fee is for a physical examination to determine that the job offered is within the physical capabilities of the applicant and is only charged to individuals who have been offered work contingent upon passing the physical examination; or¶

(c) The fee is for a license, test or check (such as a background check) that is required by statute or law and is charged only to individuals who have been offered work contingent on obtaining the required license or passing the required test or check.¶

(4) Unless the conditions of any job listing can reasonably be shown to be a "bona fide occupational requirement" (BFOQ), as determined by the Department, all employers making use of the Employment Department's job listing system will abide by all state and federal laws relating to Equal Employment Opportunity, including prohibition against discrimination.¶

(5) Job listings streamed from outside sources that are not staff accepted and job listings entered by validated employers may be immediately made available to customers. If any of these listings are found to be out of compliance with Federal and State laws and rules, the agency will take necessary action to remedy.¶

(6) The Employment Department shall evaluate all requests to accept job listings streamed from outside sources. If the agency finds a request to be viable, the agency shall enter in a written agreement prior to data exchange.¶

~~(7) Subsections (1), (5) and (6) of this rule shall apply retroactively, beginning January 1, 2014.~~

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657.610, 657.705 - 657.725