

OFFICE OF THE SECRETARY OF STATE

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

CHAPTER 471  
EMPLOYMENT DEPARTMENT

**FILED**

01/26/2024 4:59 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Rule amendment expanding opportunities for Shared Work eligibility and benefits

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/08/2024 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:  
David Genz  
Rules Coordinator

HEARING(S)

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

DATE: 03/01/2024

TIME: 1:30 PM - 2:30 PM

OFFICER: Justin Freeman

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-254-5252

SPECIAL INSTRUCTIONS:

Webinar ID # 160 828 7578

NEED FOR THE RULE(S)

This permanent amendment to rule is needed to respond to passage of House Bill (HB) 3331, which amends Work Share eligibility and payments, and the modernization of the unemployment insurance benefit payment system.

On May 8, 2023, Governor Tina Kotek signed HB 3331 into law. The bill became effective 91 days after Sine Die, on September 24, 2023. HB 3331 amended eligibility requirements for employees to receive benefits under shared work plans. The amendment to ORS 657.370(1) updates the definition of affected employee to "an individual who is employed as a member of an affected group by the shared work employer, other than on a seasonal, temporary or intermittent basis..." The amendment to ORS 657.380(1)(b) expands the percent range of reduction in hours an employee may work in order to qualify for shared work benefits from 20-40% to 10-50%. Also, as part of the permanent rule, two references to work share benefits as "paid leave" will be changed to "paid time," to distinguish between Work Share benefits and Paid Leave Oregon benefits.

On March 4, 2024, the Oregon Employment Department (OED) is rolling out a new unemployment insurance benefit payment system. In our legacy system the Work Share employer filed the weekly claims for their employees, in the new

system the Work Share employee will be filing their weekly claims.

The language in this permanent rule mirrors the updates under HB 3331 to ensure the rule is consistent with ORS chapter 657 and updates the rule to be consistent with how the new system will operate. This change to the permanent rule will ensure that all Work Share program participants will be paid accurately.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

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

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

By providing Unemployment Insurance benefits, the Oregon Employment Department (OED) will allow those who are unemployed or underemployed with critical financial support. This program provides a much-needed benefit to under-resourced and underserved populations and helps to combat the insidious impact of historical and current injustice and iniquity that families of color face when trying to access government programs.

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

While amending our administrative rule for the Shared Work Program, OED looked at the racial equity impact of the administrative rules and answered the questions below.

What are the racial equity impacts of this particular rule, policy, or decision and who will benefit from or be burdened? OED recognizes that due in part to historic exclusion and racial disparities, Black, Indigenous, Latin/o/a/x, Asian, Pacific Islander, and other people of color and their small businesses experience specific discrimination and other barriers in learning about the requirements of, and accessing support for, governmental and other programs. Recognizing a need for transparency, proposed rule amendments clarify Shared Work eligibility requirements by conforming administrative rule language with newly revised state statutes.

OED recognizes that racial disparities, discrimination and inequities across society is evidence of institutional racism that is often invisible and sometimes unintentional, but inherent elements of policy development. We recognize the importance of acknowledging and understanding racial and ethnic disparities in access to and use of UI is vital in developing inclusive administrative rules and policies. OED will continue to gather relevant data to address these disparities as the new eligibility requirements are implemented.

Are there strategies to mitigate the unintended consequences?

It is important to recognize that complex bureaucratic processes often have built-in barriers, such as the legal language used, that disproportionately impact those who are non-native English speakers and individuals who are socioeconomically disadvantaged. Furthermore, due to historical exclusion and systemic racism, communities of color, in particular Black, Latino/a/x or Indigenous persons in the U.S may not fully trust the legal system and government processes. As policymakers consider legislation, however, they can help mitigate some of these concerns. Increased access to UI should address disparities in access and enhance racial equity.

OED's goal is to ensure that there is equity for businesses and workers in Oregon. The UI Division places a high priority on developing and maintaining a diverse and inclusive culture and ensuring there is equitable access to understanding for businesses and workers. Below are some strategies the UI Division has implemented or plans to implement to mitigate unintended consequences:

- Providing instructions, guidebooks, and all other materials in plain language, in multiple languages, and in alternative formats such as video;
- Providing supplemental materials to guidebooks such as a “frequently asked questions,” section on our website, instructional videos, and other tools in order to accommodate different learning styles; monitoring usage to inform gaps in initial and continued messaging;
- Evaluating ongoing debt collection practices, once started, to determine what, if any, impact payment application practices and debt waiver policies are having on narrowing historic racial gaps within collections;
- Establishing and using an equity framework to standardize review processes to ensure that all new and ongoing processes, procedures, administrative rules, and related communications are furthering program equity;
- Collaborating with the division’s data team to gather and analyze information for any gaps or trends on groups impacted by contributions or self-employed;
- Monitoring a number of data elements related to UI in order to determine if and what disparate outcomes historically marginalized groups are facing;
- Continuously explore ways to make changes within the policy and technology sections should disparities begin to arise in the program;
- Committing to, and then provide, ongoing anti-racism and trauma-informed care training to assist staff in understanding, identifying, and eliminating negative impacts that UI policy, procedures, and rules may otherwise have on already marginalized groups.

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FISCAL AND ECONOMIC IMPACT:

This permanent amendment to rule does not create any fiscal or economic impact.

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

(2) (a) No additional small businesses will be impacted other than those are impacted by the passage of the HB 3331.

(b) None.

(c) None.

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

These rules simply conform current administrative rule to the new statutory language created by HB 3331 and reflect the systematic improvements being made to the modernized unemployment insurance benefit payment system. While drafting of the rule language did not involve small business representatives other than those on the Employment Department Advisory Council, a number of representatives of small businesses were involved in the legislative passage of HB 3331.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 471-030-0079

RULE SUMMARY: This permanent rule expands the definition of Work Share eligibility and expands percentage range of reduced work hours.

CHANGES TO RULE:

Shared Work Plans and Benefits ¶¶

471-030-0079: Shared Work Plans and Benefits¶¶

- (1) The beginning date for a shared work plan shall be no earlier than the week after the plan is approved.¶¶
- (2) An initial claim for shared work benefits is effective the week filed. An initial claim for shared work benefits submitted prior to the start week of the employer's shared work plan will be filed effective the week the employer's shared work plan becomes effective.¶¶
- (3) When an incomplete form is submitted by the employer, the Employment Department shall send a request for information to the employer. If the requested information is supplied by the employer within seven calendar days of the date of the request, the date on the original form will be honored.¶¶
- (4) If an employee's work schedule is reduced by more than 450% in a week covered by a shared work plan, the employee may use hours from other paid time, such as vacation time, to bring the work hour reduction within the 210% to 450% range required to receive shared work benefits.¶¶
- (5) As determined by the Department, paid ~~leave hour~~time used for the purposes of serving jury duty, bereavement leave, the employee being sick, caring for a member of the employee's immediate family who is sick, or in response to a declared emergency as defined in OAR 471-030-0071 shall count as hours worked during the week. However, this does not apply when the employee misses an opportunity to work for other reasons. ¶¶
- (a) Example 1: An employer's shared work plan reduces the regular working hours from 40 hours to 240 hours per week (a reduction of 450%). The employer has 240 hours of work available but the employee misses a day of work to provide care for an immediate family member who is sick. The employee may use paid ~~leave~~time for the day to bring them within the 210% to 450% range required to receive shared work benefits. ¶¶
- (b) Example 2: An employer's shared work plan reduces regular working hours from 40 hours to 240 hours per week (a reduction of 450%). The employer has 240 hours of work available but the employee does not work some of the available hours because they traveled out of state for vacation purposes. The employee missed an opportunity to work and cannot use other paid time to bring their work hour reduction within the 210% to 450% required to receive shared work benefits.¶¶
- (6) For purposes of section (5) of this rule, the term "immediate family" has the same meaning as the term is defined in OAR 471-030-0038(1)(f).¶¶
- (7) The provisions of 471-030-0079(4) and (5) do not apply when an entire week of work for the shared work employer is missed.¶¶
- (8) For purposes of ORS 657.155(1)(c), during any week an employee is not eligible for shared work benefits and files a claim for regular unemployment insurance benefits, the employee will be considered actively seeking work if:¶¶
- (a) The employee remains in contact with the shared work employer; and¶¶
- (b) The employee has been given a date to return to either full time work, their normal weekly hours of work, or to working the number of hours required to qualify for shared work benefits; and¶¶
- (c) The date to return to work is within four calendar weeks following the week the employee did not meet the hourly reduction requirements for shared work eligibility.¶¶
- (9) Continued claims for shared work benefits shall be completed by the shared work employere and submitted to the Employment Department no later than seven days following the end of the week for which benefits, waiting week credit, non-compensable credit week, or any combination of these is claimed. Shared work employees must provide the ~~e~~Employment Department all information needed ~~in order to submit a timely continued claim for to~~ claim a week of shared work benefits. Such information may include, but is not limited to, information about work and earnings for another employer, missed opportunities to work, or other paid time used during the week being claimed.

Statutory/Other Authority: ORS 657.610, ORS 657.100(3), ORS 183.335, ORS 183.355

Statutes/Other Implemented: ORS 657.370, ORS 657.375, ORS 657.380, ORS 657.385, ORS 657.390