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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
03/29/2022 4:07 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Conformity with federal requirements around UI Trust Fund and clarifying interest on overdue deferred taxes.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/30/2022 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:
Anne Friend
Rules Coordinator

HEARING(S)

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

DATE: 04/21/2022

TIME: 3:00 PM - 5:00 PM

OFFICER: Anne Friend

ADDRESS: Virtual

Oregon Employment Department

Salem, OR 97311

SPECIAL INSTRUCTIONS:

Link for registering: https://www.zoomgov.com/webinar/register/WN_N7Jew-imS2yKQdNoudc4kQ

NEED FOR THE RULE(S)

HB 3389 had an operative date of September 25, 2021. It modified various statutory provisions addressing the UI Trust Fund, which funds Oregon's UI benefit programs, to reduce UI taxes for employers who were compelled to lay off employees due to the COVID-19 pandemic and through no fault of their own. Oregon received federal guidance subsequent to the passage of HB 3389 which required specific language in statute or rule to clarify that the modifications to the UI Trust Fund were specifically to address impacts from the COVID-19 pandemic. OED is proposing to adopt OAR 471-031-0315 to satisfy this federal requirement.

The Department is also proposing to adopt OAR 471-031-0320 to clarify how interest is accrued on unpaid balances if an employer receiving a deferral of taxes due for calendar year 2021, as allowed by HB 3389, does not pay their deferred balance by June 30, 2022.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

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

agency.

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

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 rules for UI eligibility requirements, the UI Division looked at the racial equity impact on these administrative rules and answered the question below.

What are the racial equity impacts of this particular rule(s), policy or decision and who will benefit from or be burdened?

The proposed rule amendment conforms administrative rule language to federal requirements. The amendment does not represent a substantive change in policy and will functionally have no impact on employees, employers, or anyone else doing business with the Department. Thus it is highly unlikely that the rule change will impact racial equity in the state.

Are there strategies to mitigate the unintended consequences?

OED will be closely monitoring implementation of this rule to look for potential unintended consequences though, as noted above, the overall general impact of the rule change is expected to be negligible.

FISCAL AND ECONOMIC IMPACT:

The Department does not foresee any substantial fiscal or economic impact due to this rule change.

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. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): There are no state agencies, units of local government, or members of the public likely to be economically affected by the rule.

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

a. Estimate the number and type of small businesses subject to the rule: As of the fourth quarter of 2021, there are 115,096 employers with 50 employees or less in Oregon that are subject to UI law.

b. Projected reporting, recordkeeping, and other administrative activities required for compliance, including costs of professional services: The Department does not anticipate any change in expected reporting, record keeping, and administrative activities and cost required to comply with the rule.

c. Equipment, supplies, labor and increased administration required for compliance: The Department does not anticipate any increase in costs of professional services, equipment supplies, labor, and increased administration required to comply with the rule.

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

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.

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 individuals representing employers and employees in equal numbers, and representatives of the public who shall elect their chairperson. The Department did consult with the Council prior to the filing of this proposed rulemaking and will continue to seek input from stakeholders during the public comment period and at the public hearing.

RULES PROPOSED:

471-031-0315, 471-031-0320

ADOPT: 471-031-0315

RULE SUMMARY: The proposed permanent rules satisfy federal requirements regarding changes to the UI Trust Fund and clarify how interest is accrued on overdue deferred taxes.

CHANGES TO RULE:

471-031-0315

Declaration that Oregon House Bill 3389 was passed to address the COVID-19 Pandemic.

Oregon House Bill 3389 became effective on September 25, 2021, and utilized flexibilities allowed under the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA). As required in guidance issued by the United States Department of Labor, through the Unemployment Insurance Program Letter 13-20 Change 3, this rule clarifies the changes made by Oregon House Bill 3389 were due to economic hardships directly resulting from the COVID-19 pandemic.

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657

ADOPT: 471-031-0320

RULE SUMMARY: The proposed permanent rules satisfy federal requirements regarding changes to the UI Trust Fund and clarify how interest is accrued on overdue deferred taxes

CHANGES TO RULE:

471-031-0320

Implementation of Provisions Related to Unpaid Deferral Balances

(1)(a) If applying the provisions of Section 4 (1)(b) of ORS chapter 657 [2021 c.638 22] [2021 c.638 24], an employer receiving a deferral of taxes due for calendar year 2021 must pay the deferred amount by June 30, 2022.

(b) Unpaid balances as of July 1, 2022 will result in interest accrued and applied to the unpaid balance beginning with the month in which the balance was originally due under OAR 471-031-0070(1); and

(c) The employer is no longer eligible for forgiveness of taxes under ORS 657.515.

(2) Two examples are provided in the subsections below for calculating the interest on the unpaid deferral balance:

(a) An employer defers \$500 or one-third of the tax due in the third quarter of 2021. Based on the employer's rate increase of one percentage point, they are eligible for 50% forgiveness of the deferrable amounts. On July 1, 2022, all of the \$500 owed for the third quarter of 2021 remains unpaid. The employer is assessed interest at 1.5% per month or fraction of a month on the \$500 unpaid deferred amount starting November 1, 2021, and is not eligible for 50% forgiveness because the employer has not paid all tax liabilities imposed that are not deferred or forgiven in a timely manner (Section 4. (1)(a) & (4)(b) of Chapter 638, Oregon Laws 2021.

(b) An employer defers \$500 or one-third of the tax due in the third quarter of 2021. Based on the employer's rate increase of one percentage point, they are eligible for 50% forgiveness of the deferrable amounts. On July 1, 2022, half of the deferred amount or \$250 remains unpaid. The employer has the remaining \$250 forgiven, and is assessed no interest because the employer has paid all tax liabilities imposed that are not deferred or forgiven in a timely manner (Section 4. (1)(a) & (4)(b) of Chapter 638, Oregon Laws 2021.

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657