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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

01/25/2022 4:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending the School Employee OAR to address passage of Senate Bill 496

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/28/2022 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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Salem, OR 97311

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: 02/17/2022

TIME: 4:00 PM - 6:00 PM

OFFICER: Anne Friend

ADDRESS: Oregon Employment Department

Virtual Public Rulemaking Hearing

Director's Office

Salem, OR 97311

SPECIAL INSTRUCTIONS:

Register at: https://www.zoomgov.com/webinar/register/WN_U3MC4D41TTqAL8aHHQMeWw

NEED FOR THE RULE(S)

As it is currently written, OAR 471-030-0074 clarifies that employees of educational institutions who are employed in the operation or maintenance of facilities, or janitorial services are exempt from the between and within term denial provisions provided in ORS 657.221 provided the work was performed for an educational institution. SB 496 added additional services to ORS 657.221 (5) that are exempt from the denial provisions. To reflect the changes to ORS 657.221 (5), OAR 471-030-0074 (2) needs to be updated to read: "The provisions of 657.221 (5) shall apply when the individual performs the majority of their job duties in the occupation while working in the industry classified as educational services." This will allow future exemptions to be added to ORS 657.221 (5) without the need for additional rulemaking.

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 simply conforms administrative rule language to the statutory language changes created by SB 496. 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 will 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 third quarter of 2021, there are 751,257 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 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 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.

AMEND: 471-030-0074

RULE SUMMARY: This proposed amendment allows the Employment Department to implement Senate Bill (SB) 496

CHANGES TO RULE:

471-030-0074

School Employees ¶

~~(1) The effective date of this rule shall apply retroactively to September 1, 2021.¶~~

~~(2) An "academic year" is the time frame within 12 months and separated by break periods in which an educational institution, program(s) within an educational institution, or location(s) of an educational institution ordinarily operates to provide courses of study.¶~~

~~(23) For the purpose of the provisions of ORS 657.221(5), services consisting of the operation or maintenance of facilities or janitorial services shall only include work considered by the department to be classified in an occupation in which shall apply when the individual performs the majority of their job duties include janitorial or facilities services the occupation while working in the industry classified as educational services.¶~~

~~(34) ORS 657.167 and 657.221 apply when the individual claiming benefits was not unemployed, as defined by ORS 657.100, during the relevant period in the preceding academic year or term. The relevant period is:¶~~

~~(a) The week prior to the holiday or vacation period when the week(s) claimed commenced during a holiday or vacation period.¶~~

~~(b) The prior academic year or term when the week(s) claimed commenced during a customary recess period between academic terms or years, unless there is a specific agreement providing for services between regular, but not successive terms.¶~~

~~(c) The last academic year or term when the week(s) claimed commenced during a recess between non-consecutive academic terms or years when there is a specific agreement providing for services between regular, but not successive terms.¶~~

~~(45) The provisions of ORS 657.167 and 657.221 apply regardless of whether or not the individual performed services only during an academic year or in a year-round position.¶~~

~~(56) When an individual performs services for more than one educational institution, any wages earned by the individual working for an institution for which there is a contract or reasonable assurance are excluded from the determination of the individual's weekly and maximum benefit amount during the period between academic year, term or remainder of a term.¶~~

~~(67) In accordance with ORS 657.660, each educational institution shall provide the Employment Department, annually, the time frames for their break, vacation, or holiday periods. Failure to do so will result in a determination based on the shortest established time frames for similar institutions.~~

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

Statutes/Other Implemented: 657.100(3), ORS ~~657.167~~221, ~~657.221~~167