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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

05/21/2018 12:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Changes to the Process for Requesting an Unemployment Insurance Benefits Hearing

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/22/2018 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:
Cristina Koreski
Rules Coordinator

HEARING(S)

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

DATE: 06/22/2018

TIME: 10:00 AM - 12:00 PM

OFFICER: David Genz

ADDRESS: Employment Department
Auditorium

875 Union St NE
Salem, OR 97311

SPECIAL INSTRUCTIONS:

Conference Call: 888-850-4523

Participant Code: 440528

NEED FOR THE RULE(S):

The Employment Department is amending this rule to improve agency efficiency for handling of hearing requests for Unemployment Insurance (UI) benefit recipients and their employers. This change in rule will shift which section of the agency internally will handle processing of hearing requests, from the Office of Administrative Hearings (OAH) to the UI Division. The department also believes that this change will further demonstrate the OAH's impartiality when handling appeals of decisions made by the department.

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: http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx or from the agency.

FISCAL AND ECONOMIC IMPACT:

The Employment Department does not anticipate any external fiscal or economic impact due to the change in rule.

While the Office of Administrative Hearings is part of the department, this section of the agency is decisionally independent and, except for contributions to shared services, has a separate budget and allocation of positions. As a result of this proposed change in rule, the department anticipates there could be a possible increase in workload for the Unemployment Insurance Division which may require additional positions in the future. The department believes it will be able to address any workload imbalance using the existing resources budgeted for the current biennium and will gather information to analyze after the change is implemented to make decisions about whether additional resources are necessary in the future.

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) We believe this change will incur minimal costs for the department, mostly pertaining to updating documents and website information as well as communication and outreach to customers and other stakeholders. Other than the aforementioned costs for the department, there will be no cost to comply for state agencies, units of local government, and the public.

(2) (a) The department estimates there are approximately 98,500 small businesses and types of business and industries with small businesses in Oregon that are subject to UI law and therefore subject to this change in rule.

(b) There is no increase in costs for projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services, as a result of the adoption of this rule.

(c) There is no increase in costs for equipment, supplies, labor and increased administration required for compliance as a result of the adoption of this 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 does not have an Administrative Rule Advisory Committee. However, as specified under ORS 657.695, the department does have an Employment Department Advisory Council which includes an equal number of employer and labor representatives. The department consulted with the Employment Department Advisory Council prior to the filing of this rulemaking and will continue to seek input from stakeholders during the public comment and public hearing stage.

AMEND: 471-040-0005

RULE SUMMARY: The Employment Department is amending the rule for how requests for hearings are processed on administrative decisions related to the payment or the amount of Unemployment Insurance (UI) benefits. The department is making three changes to the rule:

1) In addition to receiving requests by mail or by fax, the department will accept requests by e-mail or other electronic means as designated by the department on the appealable document. The department will no longer accept UI benefit hearing requests by telephone.

2) The department will no longer accept requests for hearing received by mail or by fax to the Office of Administrative Hearings.

3) Requests for hearing will continue to be filed provided the party specifically requests a hearing or otherwise expresses a present intent to appeal but the department will now require that it can be determined what issue or

decision is being appealed.

These changes do not diminish or limit the right to due process UI benefit recipients or their employers have in requesting a hearing. The transition period for this change in process will be three months.

The Employment Department requests public comment on whether other options should be considered for achieving the rule's substantive goals, while reducing the negative economic impact of the rule on businesses. The agency is holding a public hearing for this rule on Friday, June 22, 2018 from 10:00 a.m. to 12:00 p.m. in the Employment Department Auditorium (875 Union St NE, Salem, OR 97311). Anyone interested in providing the department feedback on the rule is welcome to attend the public hearing in person. If you are unable to attend the hearing in person but want to provide comments on the rule, you have the option of calling the conference line at 888-850-4523 (Passcode # 440528). Written comments may also be submitted via e-mail to OED_Rules@oregon.gov by Friday, June 22, 2018 at 5:00 p.m. All comments received will be given equal consideration before the department proceeds with the permanent rulemaking.

CHANGES TO RULE:

471-040-0005

Request for Hearing ¶

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed. ¶

(2) A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed: ¶

(a) By mail, ~~by fax or by telephone with any Employment Department Unemployment Insurance (UI) Center or UI Section in Oregon~~ fax, e-mail, or other electronic means as designated by Employment Department on the appealable document; or ¶

(b) In person at any publicly accessible Employment Department office in ~~Oregon;~~ or ¶

~~(c) By mail or fax with the Office of Administrative Hearings in Oregon.~~ ¶

(3) A request for hearing on an administrative decision related to unemployment insurance taxes pursuant to ORS 657.683, 657.663, 657.485, and 657.457, must be in writing and may be filed: ¶

(a) By mail or by fax with any Employment Department UI Center or UI Tax Section office in Oregon; ~~or~~ ¶

(b) In person at any publicly accessible Employment Department office in Oregon; ¶

(c) By e-mail to the Employment Department's e-mail address as provided on the appealable document; or ¶

(d) Through the use of the Employment Department's secured website as provided on the appealable document. ¶

(4) The filing date for any request for hearing shall be determined as follows: ¶

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of delivery, as evidenced by the receipt date stamped or written by the agency employee who receives the document, shall be the date of filing. ¶

(b) When filed by mail, the date of filing shall be the postmarked date affixed by the United States Postal Service or, in the absence of a postmarked date, the most probable date of mailing. ¶

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing. ¶

~~(d) When filed by telephone, the date of filing shall be the date marked or stamped by the agency employee accepting the request for hearing.~~ ¶

~~(e) When filed by e-mail, the date of filing shall be the date of delivery, as evidenced by the receipt date on the~~

Employment Department's e-mail system, according to Pacific Time.¶

(~~f~~e) When filed through the secured website, the date of filing shall be the date indicated in the confirmation e-mail sent to the requestor by the Employment Department, according to Pacific Time.¶

(~~g~~f) When filed by any other means, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the employee of the Employment Department, ~~Office of Administrative Hearings or Employment Appeals Board~~ who receives the document.¶

(5) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.¶

(6) This rule is effective for all hearing requests filed after the effective date of this rule.

Statutory/Other Authority: ORS 183.335, 657.260, 657.265 - 657.270, 657.335, 657.610 & OL 1993, Ch. 729

Statutes/Other Implemented: ORS 657.280, 657.610, 657