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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ERB 1-2023

CHAPTER 115

EMPLOYMENT RELATIONS BOARD

FILED

08/29/2023 4:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary rule for using an electronic record and an electronic signature for showing of interest.

EFFECTIVE DATE: 08/29/2023 THROUGH 02/24/2024

AGENCY APPROVED DATE: 08/29/2023

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Filed By:
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Rules Coordinator

NEED FOR THE RULE(S):

The rule is needed to comply with HB 2573 (2023), which directs this agency to develop procedures that may be used for preparing and signing authorizations designating bargaining representatives using an electronic record and an electronic signature.

JUSTIFICATION OF TEMPORARY FILING:

HB 2573 (2023) was signed by Governor Kotek on June 30, 2023. The bill included an emergency clause and took effect on passage. Because of the legislative expression of a need for this agency to immediately provide procedures for the use of electronic signatures and an electronic record in signing authorizations to designate a bargaining representative, it is necessary to promulgate a temporary rule to satisfy that mandate while a permanent rule is developed. In the absence of a temporary rule, any constituent seeking to use an electronic signature or electronic record will be harmed by not being able to do so, despite the legislature's determination that those resources should be available.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

The agency relied on HB 2573, its legislative history, a recording of a July 31, 2023, meeting of the agency's standing Rules Advisory Committee, and a written submission of the Oregon AFL-CIO, dated August 22, 2023. The three-member Board also conducted a public hearing on August 29, 2023. Recordings of the Rules Advisory Committee and the public hearing, as well as all other documents, are available for inspection and listening on request and by appointment Monday through Friday, 8:00 a.m. to 5:00 p.m., at the Employment Relations Board, 1225 Ferry St. S.E. Salem, Oregon, 97301.

AMEND: 115-025-0021

RULE SUMMARY: Temporary rule amending OAR 115-025-0021 to provide procedures for preparing and signing authorizations designating bargaining representatives using an electronic record and an electronic signature.

CHANGES TO RULE:

115-025-0021

Showing of Interest Requirements

- (1) Many petitions must be supported by a valid showing of interest.¶
- (2) A petitioner can fulfill the showing of interest requirement by submitting authorization documents (typically cards) signed by eligible employees. An authorization document must, at a minimum, contain the following:¶
- (a) The employee's name, typed or legibly printed;¶
 - (b) The employee's signature;¶
 - (c) The date of the employee's signature;¶
 - (d) A statement that the employee designates the named labor organization as the employee's exclusive representative for purposes of collective bargaining with the employee's employer (if applicable); and¶
 - (e) A statement that the employee understands how the authorization document may be used. The statement must be consistent with the type of petition being filed. Model language for card check petitions is provided below, in section (4) of this rule.¶
- (3) An authorization document must be signed and dated within the 180-day period before the petition is filed.¶
- (4)(a) The Board has developed the following model language that may be used for the showing of interest for a card check petition (to certify a new bargaining unit or to add unrepresented employees to an existing unit):¶
- I designate [name of labor organization] as the exclusive bargaining representative for the purposes of collective bargaining with [name of employer]. I understand that my signature may be used to obtain certification of the above-named labor organization as the exclusive bargaining representative, without an election.¶
- [Employee Name] [Employee Signature] [Date Signed]¶
- (b) The authorization document may use different language than subsection (4)(a) of this rule, but the document must include the same information for the authorization to be valid.¶
- (5)(a) When authorization cards are used for the showing of interest, the petitioner should arrange the cards alphabetically by last name. Authorizations that do not substantially comply with this rule will not be counted. ¶
- (b) ~~The Board will accept electronic copies of showings of interest with a petition as sufficient to initiate the Board's processes, but petitioners must provide or~~ An electronic record and an electronic signature, as those terms are defined in ORS 84.004, may be used to prepare and sign authorizations.¶
- (c) Notwithstanding section (2) of this rule, and except as otherwise provided in subsection (d) of this section, a petition submitted under this Division as an electronic record that includes a signed authorization using an electronic signature must:¶
- (A) Include the following information:¶
 - (i) The name of the signer;¶
 - (ii) The signer's email address or social media account;¶
 - (iii) The signer's telephone number;¶
 - (iv) The exact language that the signer is assenting to by providing the electronic signature;¶
 - (v) The date of submission of the electronic signature; and ¶
 - (vi) The name of the public employer that employs the signer; and¶ - (B) Be accompanied by a verification declaration by the petitioning party:¶
 - (i) Specifying the technology used to obtain and verify the signatures;¶
 - (ii) Providing the methods used to ensure the authenticity of the signature; and¶
 - (iii) Confirming that the information transmitted to the signer was the same information to which the signer assented.¶ - (d) If the technology used to provide the signed authorization does not support digital docu~~signatures that are suited to satisfy the requirements of the Board within ten (10) days of the filing of the petition~~verification declaration described in subsection (c) of this section, the petitioning party must submit evidence that, after the petitioning party obtained an electronic signature, the party promptly transmitted a confirmation transmission to the signer confirming that all of the information described under subparagraphs (c)(A)(i) to (vi) of this section is true.¶
- (6)(a) The showing of interest submitted under these rules will not be furnished to any of the parties except the party that filed the showing of interest, which may examine cards or petitions when signatures are deemed invalid.¶
- (b) The showing of interest will be destroyed when the file is closed unless the party filing the showing of interest requests that its showing of interest be returned. The Board will return the original showing of interest to a petitioner upon request if the petition is withdrawn.

Statutory/Other Authority: ORS 240.086(3), 243.766(7)

Statutes/Other Implemented: ORS 240