



Oregon

Tina Kotek, Governor

Employment Relations Board

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EMPLOYMENT RELATIONS BOARD Notice of Public Hearing

The Employment Relations Board will hold a public hearing to deliberate and potentially vote on recommendations from the agency's Rules Advisory Committee regarding proposed rule amendments to Division 10 of the agency's rules (OAR Chapter 115). The attached NOTICE OF PROPOSED RULEMAKING is also published to the agency's website.

DATE AND TIME

APRIL 22, 2026

10:00 A.M.

PUBLIC COMMENTS ARE DUE NO LATER THAN April 22, 2026, 10:15AM

LOCATION:

**1225 FERRY ST. S.E, SALEM, OREGON, EAST MT MAZAMA (RM #3).
INDIVIDUALS MAY ALSO VIEW AND PARTICIPATE BY
VIDEOCONFERENCE USING THE TEAMS PLATFORM.**

**To register to participate in this public meeting,
please email EmpRel.Board@ERB.oregon.gov and indicate whether you intend to participate
in person or by videoconference.**

This meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to April Bathurst, 503-378-3807.

NOTICE OF PROPOSED RULEMAKING

CHAPTER 115

EMPLOYMENT RELATIONS BOARD

FILING CAPTION: Update rules regarding facsimile filing, remote hearings, and prehearing document exchange.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/22/2026 10:15 AM

HEARING(S):

DATE: 04/22/2026

TIME: 10:00 AM - 11:00 AM

OFFICER: Adam Rhynard

IN-PERSON HEARING DETAILS

ADDRESS: 1225 Ferry St S.E., Salem, OR 97301

REMOTE HEARING DETAILS

MEETING URL: <https://teams.microsoft.com/meet/26752452669927?p=cOFnhrKjBIqh51BkcR>

PHONE NUMBER: 503-378-3807

NEED FOR THE RULE(S):

These rule amendments are needed to improve the clarity and conciseness of the agency's rules as recommended by constituents, to reflect best practices in proceedings before the agency.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Rules Advisory Committee report on recommended changes and public meetings recordings are available for download via the Employment Relations Board website.

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

None

FISCAL AND ECONOMIC IMPACT:

None

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).

None

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

The Board used a Rules Advisory Committee comprised of constituents from both management and labor.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

CONTACT:

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1225 Ferry St. S.E.

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RULES PROPOSED:

115-010-0033, 115-010-0043, 115-010-0068, 115-010-0070

AMEND: 115-010-0033

RULE TITLE: Filings and Service of Documents

RULE SUMMARY: This amendment removes facsimile filing as an allowed filing method.

RULE TEXT:

(1)(a) Any document required or allowed to be filed with the Board or served on a party may be filed or served by mail, email, in person, or through the Board's online case management system. The Board shall post on its website the street address for personal delivery, the mailing address for filing by mail, the email address to be used for email filing, and the website address for the online case management system.

(b) A complaint or answer will not be considered filed until the filing fees required by ORS 243.672(6) have been paid.

(c) If a physical document is filed at the Board's office (e.g., by mail or other delivery service) and received by the Board by 5:00 p.m. Pacific Time on a business day, then the document is considered filed on that business day. A physical document received after 5:00 p.m. Pacific Time is considered filed on the next business day. If a document is filed by email or the Board's online case management system, and the Board's record indicates that the Board received the document on or before 11:59 p.m. Pacific Time on a business day, then the document is considered filed on that business day. Midnight is considered the beginning of the next day. A document filed by any means on a non-business day is considered filed on the next business day.

(d) Filing by email or the online case management system is considered complete upon receipt of the entire electronic transmission by the Board. The Board's metadata created by the successful transmission of the email or the online case management system filing constitutes the time of receipt.

(2)(a) Unless otherwise stated in these rules or directed by the Board or Board Agent, the filing party must serve all documents filed with the Board on the named parties or a representative of record, and

the filing party must include proof of service with the filing.

(b) If a party to a case is not using the Board's online case management system, the other parties shall serve documents on that party by any of the other means authorized by OAR 115-010- 0033(1)(a).

(c) When the parties have a simultaneous filing deadline for a post-hearing brief or memorandum in aid of oral argument, the filing party is not responsible for serving the filing on the other parties. Instead, the Board will serve a copy of the post-hearing brief or memorandum in aid of oral argument on the other parties, after the filing deadline has passed. The Board or Board Agent may designate additional documents for filing and service under this provision.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 240, 243

AMEND: 115-010-0043

RULE TITLE: Remote Hearings

RULE SUMMARY: This amendment makes style changes and includes party preference as a factor to consider when determining whether a hearing should be in person or remote.

RULE TEXT:

(1) The Board or Board Agent has the discretion to conduct a hearing or portion of a hearing remotely, including by videoconference or telephone.

(2) Before making a determination whether to conduct a hearing in person or remotely, the Board or Board agent will request the parties' preferences regarding the format for the hearing. The Board or Board Agent shall also consider the circumstances of the particular case, including:

(a) The amount of notice given;

(b) The availability of equipment;

(c) The length of hearing;

(d) The amount of documentary evidence to be utilized during the proposed testimony;

(e) The number and location of witnesses;

(f) The degree to which witness credibility is at issue;

(g) The hardship on the parties or witnesses;

(h) Any objections of an opposing party; and

(i) The cost to the Board.

(3) The Board may conduct oral argument, under OAR 115-010-0095, or conduct other business remotely.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 243

AMEND: 115-010-0068

RULE TITLE: Prehearing Procedures

RULE SUMMARY: This amendment identifies the manner of document exchanges when conducting hearings remotely or in person.

RULE TEXT:

- (1) The Board or Board Agent may convene prehearing conferences with the parties' representatives for the purpose of:
 - (a) Scheduling hearing dates, witnesses for hearing and further prehearing conferences;
 - (b) Disposing of pending motions;
 - (c) Formulating and simplifying issues;
 - (d) Discussing settlement of any or all of the issues;
 - (e) Avoiding submission of unnecessary or cumulative exhibits or other evidence;
 - (f) Stipulating to facts;
 - (g) Discussing the need for any special hearing procedures;
 - (h) Discussing reasonable access to exhibits during the hearing, including steps to ensure access for remote witnesses; and
 - (i) Discussing any other matters that may assist in the disposition of the matter.
- (2) At the discretion of the Board or Board Agent, the prehearing conference may be held by telephone or in person and may be recorded.
- (3) Witness and Exhibit Lists:
 - (a) Each party shall provide a witness list and exhibit list to the other parties and to the Board or Board Agent.
 - (b) These documents must be received no later than seven days before the scheduled hearing, unless the Board or Board Agent directs otherwise.
- (4) Exhibits:
 - (a) A party intending to offer exhibits shall, where practicable, have them marked for identification. A party offering exhibits shall provide electronic copies to any other party and the Board or Board Agent by seven days before the hearing, unless another date is set by the Board or Board Agent. The Board or Board Agent may direct the parties regarding the formatting of exhibits. A failure to comply with this subparagraph shall result in the exhibit not being admitted, unless good cause is shown.

(b) A party offering exhibits in a remote hearing is not required to provide paper copies of exhibits unless directed by the Board or Board Agent. A party offering exhibits in an in-person hearing shall provide paper copies to any other party and to the witness before seeking its admission into evidence and shall provide a paper copy to the Board or Board Agent if directed by the Board or Board Agent.

(c) Nothing in this rule shall operate to exclude offering rebuttal evidence, to which any other party may object. Admissibility will be subject to the discretion of the Board or Board Agent.

(d) A party seeking to offer a physical object other than a document shall provide a photograph of that object, which will be received in lieu of the object. A copy of the photograph must be provided to any other party.

(e) A party relying on voluminous or bulky documents shall provide the Board or Board Agent and any other party with written excerpts of matters therein that are being relied on.

(f) A party wishing to submit a transcript of an audio recording as an exhibit must also submit a notarized statement from the transcriptionist that the document is a verbatim transcript of the audio recording. A copy of the audio recording and transcript must be provided to any other party no less than seven days before the first day of hearing.

(5) A party that fails to comply with prehearing requirements set forth in the rule or ordered by the Board or Board Agent shall be denied the right to offer such evidence or make an argument regarding such matter at the hearing unless good cause is shown.

(6) The Board or Board Agent may rule before hearing on one or more of the claims or defenses, or a portion of any claim or defense, asserted in a complaint or answer. The Board or Board Agent may defer issuing a proposed order on any such prehearing ruling until after a hearing is held and a Recommended Order is issued on remaining claims or defenses.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 240, 243

AMEND: 115-010-0070

RULE TITLE: Conduct of Hearings

RULE SUMMARY: This amendment removes provisions regarding exhibit exchanges that were moved to a different section of the agency's rules.

RULE TEXT:

- (1)(a) The Board or Board Agent will open the hearing with a brief introduction of parties and issues.
 - (b) Parties shall enter appearances at the beginning of the hearing.
 - (c) Parties may make opening statements.
 - (d) Parties may present evidence in support of their respective positions. Parties shall be allowed to cross-examine witnesses and object to offered evidence.
 - (e) A party may make oral or written closing argument.
- (2) Conference During Hearing. In any proceeding, the Board or Board Agent may call a conference. The results of such conference shall be stated on the record.
- (3) Stipulation. A stipulation is an agreement. The parties in any proceeding or investigation may agree on any fact. Stipulations must be approved by the Board or Board Agent and will be included in the record of the proceeding or investigation. A stipulation will be binding on the parties. Stipulations may be regarded and used as evidence at hearing.
- (4) Continuances. The Board or Board Agent may continue a hearing. The date of a continued hearing may be fixed at the time of the initial hearing or by later written notice to the parties.
- (5) Burden of Proof:
- (a) Representation, clarification and unit redesignation hearings are investigatory and there is no burden of proof on any party. Nevertheless, in disputes concerning whether employees are "public employees," there must be sufficient evidence establishing that a statutory exclusion applies. The Board or Board Agent shall determine the order of presentation of evidence and may examine witnesses, require the production of documents and call witnesses not called by the parties.
 - (b) Unfair labor practice complaint hearings are adversarial. The complainant has the burden of proof and the burden of going forward with the evidence. The respondent has the burden of proving affirmative defenses, if any.
 - (c) In a hearing on an appeal from a disciplinary action under ORS 240.555 or ORS 240.570(3), the respondent shall have the burden of proof and the burden of going forward with the evidence. The appellant shall have the burden of proving affirmative defenses. In all other ORS ch 240 cases, the appellant shall have the burden of proof and the burden of going forward with the evidence, and the respondent shall have the burden of proving affirmative defenses.

(6) If a party chooses to have a certified transcript of the hearing prepared, the Board will be provided, at no charge, with a certified copy of such transcript.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 240, 243