

## **NOTICE OF PROPOSED RULEMAKING**

CHAPTER 115

EMPLOYMENT RELATIONS BOARD

FILING CAPTION: Clarification of 'Definition of Terms' and 'Filings and Service of Documents'

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/26/2021 10:15 AM

HEARING(S):

DATE: 10/26/2021

TIME: 10:00 AM

OFFICER: April Bathurst

ADDRESS: Employment Relations  
Board

528 Cottage St. NE

Suite 400

Salem, OR 97301

NEED FOR THE RULE(S):

These rules are needed to improve the clarity and conciseness of the agency's rules concerning representation matters and to reflect stakeholder needs on 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 inspection and listening by appointment Monday through Friday, 8:00 a.m. to 5:00 p.m., at the Employment Relations Board, Old Garfield School Building 528 Cottage ST NE, Suite 400, Salem, Oregon 97301. The report and public meetings recordings will also be provided on request. The public meetings recordings will also be provided on request.

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 stake holders.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

CONTACT:

April Bathurst  
503-378-3807  
april.bathurst@ERB.Oregon.gov  
528 Cottage ST NE  
Suite 400  
Salem,OR 97301

RULES PROPOSED:

115-010-0010, 115-010-0033

AMEND: 115-010-0010

RULE TITLE: Definition of Terms

RULE SUMMARY: Clarify "Definition of Terms"

RULE TEXT:

As used in these rules, unless the context requires otherwise:

- (1) "Appeal" means any request for review of a personnel action under ORS ch 240.
- (2) "Appellant" means a person who requests review of a personnel action under ORS ch 240.
- (3) "Appointing Authority" is defined in ORS 240.015.
- (4) "Board" means the Employment Relations Board.
- (5) "Board Agent" means any employee designated by the Board to act on its behalf.
- (6) "Business day" means Monday through Friday, but does not include any holiday as defined by ORS 187.010 and ORS 189.020, or any day that the Board is closed.
- (7) "Class" or "Classification" is defined in ORS 240.015(4).
- (8) "Complainant" means a party who has filed an unfair labor practice complaint or a complaint alleging a violation of ORS 240.309.
- (9) "Conciliator" means the head of the State Conciliation Service.
- (10) "Date of Filing" means the date a document is was received by the Board. Because there are different means for filing documents, the date of receipt is determined according to the rules that are set forth in OAR 115-010-0033.
- (11) "Date of Service" means the date sent to another party or the date of personal service.
- (12) "Day" means calendar day unless otherwise specified.
- (13) "Demotion," for purposes of action brought under ORS ch 240, means the voluntary or

involuntary movement of an employee from a position in one classification to a position in another classification having a lower salary range number.

(14) “Management Service” is defined in ORS 240.212.

(15) “Party” is any person, labor organization or employer filing a petition, complaint, charge or State Personnel Relations Law appeal with the Board; any person, labor organization or employer named as a party in a petition, complaint, charge or State Personnel Relations System appeal, or any other person, labor organization or employer whose timely motion to intervene has been granted. Where applicable, “party” also is a person, labor organization or employer under Division 40 of these rules.

(16) “Personnel Action,” for purposes of appeals brought under ORS ch 240, means any action taken with reference to an applicant, employee or position.

(17) “Petitioner” means a party who files a petition with the Board.

(18) “Recommended Order” means the Order of an Administrative Law Judge or Board Agent consisting of proposed rulings on motions and evidentiary matters, findings of fact, conclusions of law, and a recommended order.

(19) “Regular Employee” means an employee who has been appointed to a position in the state service in accordance with state law after successfully completing a trial service period or who has been otherwise granted regular status through specific provisions of law.

(20) “Respondent” means a party who is required to respond to a complaint, petition, charge, or appeal.

(21) “Showing of interest” means the evidence of support that a petitioner must show in a proposed bargaining unit before its petition will be acted on. The showing may be made by original authorization cards or petitions, both of which must include a statement of a desire by affected employees to be represented by the petitioner for purposes of collective bargaining and that must be signed and dated by employees in the proposed unit during the 180 days preceding the filing of the petition; by dues records or payroll deduction records showing the employees to be current members of a petitioning organization; or, by an existing or the most recently expired bargaining agreement applicable to the bargaining unit, to which the petitioning organization was a party. A showing of interest in support of objections to a petition for certification without an election shall comply with OAR 115-025-0075.

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

STATUTES/OTHER IMPLEMENTED: ORS 240, 243

AMEND: 115-010-0033

RULE TITLE: Filings and Service of Documents

RULE SUMMARY: Update to filings and service of documents.

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, facsimile (fax), 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 telephone number for filing by fax, 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(36) have been paid.

(c) The Board will charge \$25 for each facsimile filing.

(d) 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 to be filed on that business day. A physical document received after 5:00 p.m. Pacific Time is considered to be filed on the following business day. If a document is filed by email, fax, 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 to be filed on that business day. Midnight is considered the beginning of the following day. A document filed by any means on a non-business day is considered to be filed on the following business day.

(e) Fax filing ~~and service~~ is considered complete upon receipt of the entire fax transmission by the Board recipient and receipt by the sending party of confirmation of receipt of the fax transmission. The time of receipt indicated by the Board's fax machine constitutes the time of receipt.

(f) 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 ~~service~~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 ~~be~~ serve documents on that party by 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 ~~service~~ing of the filing on the other parties. Instead, the Board will serve a copy of the ~~p~~Post-~~h~~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

