

AGENDA

OREGON OFFICE OF ADMINISTRATIVE HEARINGS OVERSIGHT COMMITTEE

	Oregon Office of Administrative Hearings Oversight Committee Meeting					
Date/time:	August 30, 2023 9:30 am					
Location:	Microsoft Teams Click here to join the meeting					
Attendees:						
	Rep. Paul Holvey, Chair		Richard Lane		Sen. Janeen Sollman	Rema Bergin
	J. Kevin Shuba, Vice Ch		Rep. VACANT		Renee Stineman	Robert Unger
	Denise Fjordbeck		Jeff Rhoades		Sen. Kim Thatcher	

AGENDA

	Topic	Desired Outcome	Time	Presenter
1.	Welcome & Introduction of New Members	Informational	9:30 am	Chair Holvey
2.	Presentation on Key Performance Measures & UI Backlog Progress	Informational & Discussion	9:35 am	Jeffrey Rhoades, Chief ALJ
3.	Paid Leave Oregon Implementation	Information & Discussion	9:55 am	Jeffrey Rhoades, Chief ALJ
4.	Hiring Plans for 2023 & Beyond	Information & Discussion	10:15 am	Jeffrey Rhoades, Chief ALJ
5.	Legislative Session Recap and Planning for 2024	Informational	10:30 am	Paul Holvey, Chair Jeffrey Rhoades, Chief ALJ
6.	Roundtable	Informational	10:40 am	Committee Members
7.	Public Comment Period – 3 minutes each	Informational	10:50 am	Citizens
8.	Adjourn		11:00 pm	Chair Holvey

**Office of Administrative Hearings (OAH)
Oversight Committee Minutes
August 30, 2023**

Committee and Staff Present

Rep. Paul Holvey, Chair of the Committee
J. Kevin Shuba, Garrett, Hemann, Robertson, PC, Vice Chair
Richard Lane, Governor's Office
Sen. Janeen Sollman
Renee Stineman, Oregon Department of Justice
Jeffrey Rhoades, Chief Administrative Law Judge, OAH
Rema Bergin, Executive Assistant to Mr. Rhoades, OAH Staff

Other Attendees: David Gerstenfeld, Donna Brann, Michelle Morales, Monica Whitaker

Approval of Minutes

Minutes to be approved via email

Call to Order

The meeting was called to order at 9:35 a.m. by Chair Paul Holvey. Rep. Holvey announced he would be stepping down from the committee effective September 1, 2023. Rep. Sosa will be replacing him and the Speaker will be appointing a new seat for republican member. Representative Sosa is very adept at the legal end of the world and also does have some experience with administrative law in his dealings with the Ethics Commission, which he was on.

Introductions

Mr. Lane: Good morning Chair Holvey, Richard Lane, General Counsel with Governor's office. I had a civil background and litigation background before joining the governor's office.

Rep. Holvey: Welcome and appreciate the governor making sure the positions are filled. That's really important to us as one of our challenges is having a quorum to conduct our business, which is required statutorily. So I appreciate you being here and welcome. And as so with that, we'll just go ahead and move on to the next item on our agenda, which is Jeff for our August meeting to have a look back on our key performance measures and take a look at our progress as far as the backlogs and the how the OAH is dealing with those. Then we're going to move on to Paid Leave Oregon implementation for some discussion about that and let Jeff Rhodes take us through a couple of the agenda items here.

Key Performance Measures

Mr. Rhoades: I'm hopeful members of the committee are able to see the slide deck that I have in front of you. Please let me know if not and I should also say David Gerstenfeld, Executive Director of the Oregon Employment Department, was kind enough to join us as well for this first part of the presentation, there's a piece that I'll be speaking to in our key performance measure, #7, where there may be some questions

that come up for OED. So I thank you, David, for taking time out of your busy schedule to join us this morning. We really appreciate it. Mr. Rhoades went over the KPMs (attached).

Rep. Holvey: I do have a question about the prioritization. As new cases come to the OAH from OED do those new cases go to the bottom of the pack until the backlogs cleared and does that kind of force the those ones that are coming in timely to end up being late as well? It would seem like you could more quickly get to a higher percentage by making sure you're not putting all of the new cases at the bottom of the list. I'm not sure that's really the right policy or even whether that's a statutorily allowed or best practice? It just occurs to me that with the backlog still remaining and that's the priority, that means the new cases coming in or are they going to be sitting there waiting. I'll let you continue and maybe you can address that as you go along.

Mr. Rhoades: I'm happy to Mr. Chair. It's a very good question and a good point. As we were really starting to prioritize the pandemic related backlog and for the data reporting period and in particular as we were going through the budget making process and reporting to the legislature during this past session where our progress was, we were really prioritizing those older cases and frankly it was done in the name of customer service, we had Oregonians that were waiting. We had to prioritize those cases because we absolutely in the name of customer service and providing good service to Oregonians needed to get those cases scheduled and heard. As you can see here, I wanted to share with you was that we're at 3,686 remaining cases and that pandemic backlog that's down from over 10,000 cases, 10,600 cases in 2022. This is huge progress and it reflects just an amazing team that's put in a lot of effort in our UI program and also collective engagement from the whole OAH organization towards this. That's allowed us to do this 50/50 split with our judges caseloads now, that what you have is 50% of them are those older cases that you referenced, 50% are the ones that are coming in on time. That allows us to meet KPM 7 to that 47.53% standard that you see since the data reporting period. So you're absolutely right, that was something that we did consider and the way that we've addressed it, we still want to prioritize clearing these cases. It's still the highest priority for us, but also we want to make certain that we're meeting timeliness standards, which is important not just for my KPM reporting to this committee, but also the Department of Labor, which is looking at these a statistics very closely, not just for us but across the federal government. This is really helpful that we're able to do that. And Senator Sollman, one more point and then I'll take your question. I want to stress that this is not a unique to Oregon problem. Every central panel across the nation has experienced the same issue with related to a pandemic related backlog. The difference between us and other central panels, is we have seen a lot of success in clearing this body of work where other central panels are still struggling. In fact, they've asked me to come speak to how we've been so successful at an upcoming Central Panel Conference. So this is this is an excellent reflection of the work from our UI team, but we cannot take our foot off the gas yet. We have, as you can see, 3,686 cases that we still have to clear through that pandemic related workload and when we talk about hiring plans later, I'll, present to you all about what the plan is going forward for that.

Sen. Sollman: Thank you so much for bringing this right up to the top and addressing this right away. I appreciate that very much. In line with Chair Holvey's question, if any of these cases or issues remain have legal action lawsuits happening? Does that automatically put them in front if they have?

Mr. Rhoades: That's not normally something that we're looking at Sen. Sollman. These are all related to unemployment insurance benefits cases and so those typically are unrepresented parties that are coming in. It's the employer and an unrepresented party, and so it's not an issue that we see show up in this workload quite as much. Of course, we have over 70 customer agencies at OAH and for our non UI workload, those impacts we would see we would see more. It's a very good question, though.

Paid Leave Oregon

Mr. Rhoades: As you all know, Paid Leave Oregon has launched with the Oregon Employment Department. Things are going very well, part and parcel with that is going to be a contested case hearings program with the Office of Administrative Hearings. We here at OAH have been doing a lot of discussion, planning and thinking about what Paid Leave Oregon implementation is going to look like for us. First and foremost, that includes working frequently and extremely well with our partners at the Oregon Employment Department. While we were talking about this in the context of UI, I do want to say that we enjoy this fantastic working relationship also in the context of Paid Leave Oregon. What this means is that we're having frequent meetings with staff to try to troubleshoot any issues that are coming up as we work through the process. A great example we have of that just came up recently where we were working through issues with IT. A new platform was launched at OED called Francis, and we needed to figure out how we are going to interact with Francis and make certain that we get all the documents, the hearing notices, etc., to make certain that referrals are smooth and notices are legally sufficient and get out to all the parties and in the appropriate fashion. We ran into an issue where it looked like the system wasn't going to be able to appropriately talk to our system, but because of this great working relationship, we convened a group right away conducting a training. We're also just adjusting our timelines now, when and where appropriate, because this is a new program for us here in Oregon. While there are other jurisdictions that have implemented similar programs, we're not necessarily certain what the case volume is or when the cases are going to be coming to us. One of the big questions then necessarily when are we going to see cases and at what volume and what we've been doing here is a multi-pronged approach. The first of those is to look at other jurisdictions which have implemented paid leave programs, similar programs and try to figure out how similar are they to the program and or in Oregon and what types of cases are they getting, how frequently are they getting them, what is the volume and figure out if we can benchmark against that. It's an imperfect measurement because every system is quite a bit different, but I can say I've spoken to my counterpart, our neighbors, Lorraine Lee, Chief ALJ in Washington. We've reached out to jurisdictions like Connecticut, which have a very similar programmatic paid leave program and tried to figure out exactly how many cases we think are going to be coming over and that's helped us with our hiring plan for Paid Leave Oregon. We're anticipating seeing our first cases here at OAH, roughly around October, November. So the plan for that is as I mentioned before, training is essential and we're going to have many new folks coming on board to help us with this body of work. We've been thinking a lot about what training is going to look like to onboard those folks and we want the training of course, to meet the high standards we have in our other program areas. The plan is to have our senior judges and presiding judges taking those first Paid Leave Oregon cases.

For Paid Leave Oregon, in the budget we had a number of positions approved for this last legislative biennial budget, and we'll be looking at hiring a presiding administrative law judge to oversee the program as well as a number of new ALJ 1s that will be taking the benefits cases that come through. We're looking at roughly between seven and nine additional judges as part of the Paid Leave Oregon program, and that number is flexible right now because we are hiring up and down the organization. It won't just be the Paid Leave Oregon program they will also be overseeing other aspects of our OED portfolio, such as the relief of charges, cases. For these, we'll have also better staffing ratios and ALJ to presiding because we'll have the new manager in place. One of the issues that we've run into now with our current staffing is that our presiding judge of the UI program has fluctuated depending on how many folks we've had on, but it's been between 22 and 26 direct reports and that is far too many. So this additional presiding judge will be coming in and be able to take over a significant managerial function, which will be very helpful as we implement Paid Leave Oregon.

Rep. Holvey: Jeff, I thought maybe I might comment since I know Mr. Gerstenfeld is aware where of a particular issue or that came up in legislation around professional employment organizations or worker leasing companies where they were seeking sort of a multiple choice on determining who the employer of record is? So that led to another discussion that the consistency and I'm pointing this out because I kind of feel like the Governor's Office and the Department of Justice should be aware of this because I don't know how cases in different agencies come up in discussion in the Court of Appeals. I don't know how much experience has been with this, but it's my understanding that we have several different agencies that all have different standards or different processes for employers and determining who the employer of record is, as in Workers Comp, they have a different structure. Of course OED has a structure for that, and there was a request that Paid Leave Oregon be different than UI for determining who the employer of record is. Kind of a multiple choice for employers and that seemed to be potentially causing a lot of problems because if you get into the world of employee employer definitions with the US Department of Labor and the determinations made by BOLI, it's inconsistent with that. It gets into a very different world and then you enter into the world of revenue who is voluntary compliance and again employers select who the employer of record is instead of using the definitional and statutory requirements of employment law. So having our different agencies using different methodologies or accepting different choices for who the employer of record is outside of the statutory construct of employment law seems to be concerning to me and some others. There was testimony complaining about this scenario where every agency can make a different determination on who the employer of record is. If one of our administrative law hearings and in particular worker comp case says this, it's this one and which isn't consistent with the tax law or isn't consistent with employment law or inconsistent with UI. It seems like we're going to be losing every challenge. The employer of record is in the Court of Appeals because one agency will say one thing and another agency will treat it differently. I'm hoping that in the short session we'll be able to explore this area a little bit, but I'm really looking for some input, perhaps from a bigger picture look instead of a silo by agency. Within all of our state government agencies and maybe the Department of Justice would be helpful and trying to figure out what the appropriate way to do that is because from my seat, I think employment law should be driving who the employer of record is and not a worker comp decision or a Paid Leave Oregon decision or even a revenue decision. It's a very big issue, but I'm hoping we can make some progress in that kind of a discussion. I wanted to throw that out to this committee so they are aware of it, especially the within the Office of Administrative Hearings because we have judges in all of those different arenas. I don't know how consistent whether that conversation ever comes up and as and also in the Court of Appeals process, where the DOJ may be able to help shed some light on what a more definitive structure would be for both employers and employees and our agencies. That's a kind of a convoluted reference, be aware of it because I think it's really an extremely important issue. Would be very odd to have within one agency making different determinations on who the employer of record is or using different standards or just using a multiple choice. I'll leave it at that for food for thought for the future.

Mr. Rhoades: Chair Holvey, if it would be helpful Donna Brann one of our presiding administrative law judges who oversees the UI tax program and has leaned into this issue in the past is in the meeting right now and could maybe speak to this issue.

Donna Brann: So for those of you that don't know, the ICN is made up of the Inner Agency Compliance Network and it's made up of BOLI, Workers' Comp, Landscape Contractors, Construction Contractors and Department of Revenue and also OWRD. It's an issue we've talked about many times because there are different laws and rules that apply to different types of cases. To directly answer your question and represent an employee when it comes to a hearing we apply the rules that actually apply for that agency. That may mean an ALJ is doing a hearing in UI Tax, and they're going to apply those rules. They may have a hearing, a different day, and they're going to apply Construction Contractor rules, which could conflict with other rules.

That's why, as Chief Rhoades said, we do a lot of training because you have to specialize and know which rules are going to apply to the hearing, and as you've expressed and others have, it's confusing for employers. It can be fresh or different rules for a plumber versus someone who's a general contractor, so it's a bigger issue to fight long term. The problem is, as you said, there's a conflict between which agency is going to get their way with which rules. There's a lot of compromise, it's going to take some time before they get to that point, but it really is an important issue. It's on everyone's radar and I appreciate you bringing it up and I'm welcome to answer any questions you may have them. Rep. Holvey stated that he may have questions in the future.

Hiring Plan

Mr. Rhoades: One of the issues that we have been having recently has been hiring for staff positions, in particular legal secretary positions. It's been very difficult to hire into those positions and we've gone through multiple rounds of recruitments only to have them fail. For one reason or another, one of them has to do with the fact that everybody has to a CJIS background check in order to work at the OAH. That does hold up the recruitments. Currently we've just hired temporary workers to fill in the gaps and help us in some staff positions. The idea being that hopefully those temporary workers will then gain the experience, which then will allow them to meet the minimum qualifications for a legal secretary position. We'll have to do a round of staff hiring in the future for legal secretary positions for the Paid Leave Oregon program and to fill in gaps that we currently have. We're looking at netting probably somewhere between 15 to 20 new folks here at the OAH, which for us as a relatively small agency we have 121 positions in the current biennial budget. Also we're going to be pulling up through our organization, so that means we're staggering our recruitments starting with the more senior positions. Beginning with the presiding, the senior judge ALJs, ALJ 2s and then we'll be moving in late September early October hiring for a number of ALJ 1 positions that will be coming in both to take over for Paid Leave Oregon, but also to be cross trained on UI and continue to help us work through the pandemic related workload. We also want to make certain that we're doing everything from having a multilingual answering machines to potentially piloting new programs that are specifically aimed at bilingual participants, or Spanish speaking participants. There's a very good program that I'm looking at in Washington that Chief Lorraine Lee implemented where they had a Spanish specific speaking ALJ conducting hearings fully in Spanish, it's been very successful. It's something that I really want to implement here at Oregon.

Sen Sollman: Thank you! I think I will just say that I'm really excited to hear about your efforts in expanding language opportunities for Oregonians and I really appreciate your lens of the work smarter, not harder, you did that with Paid Leave Oregon. Looking who had approached these issues and challenges and how they did so, and now you're looking at that from another lens here of looking at how you can expand access for those that English isn't their first language. I just really wanted to put that on the record to say thank you.

Rep Holvey: I'll just say that some of them are from what we saw in the in the OAH statutes we pretty much sailed through without much controversy. Sometimes not all is easy happenstances and that is normal. I think everybody looked at it and thought it was just common sense and we moved forward with it. I did note that your presentation as well in conjunction with OED the Ways and Means committee went very well in addition and I think people recognize the challenges of the backlogs now caused by the pandemic and think OED handled that probably as best they can at the same time I think even under a probably a lot of criticism they did succeed in having one of the lowest fraud rates in the country. With that whole program and all those other programs that were I think at the root of the slowdown the requirement that federal government had to treat these new PUA program applicants the same as UI. UI was challenging because there's no database system on independent contractors and they had to make individual determinations on each one very was cumbersome and time-consuming which brought

criticism. They did it in such a way I think that that reduced the fraud for Oregon which is really important to the US Department of Labor. I might add I'm glad that we're working through all that, so I really appreciate that as far as those two items I think being the highlights for OAH in the last session I think going forward in 2024 we just want to try to continue to work on your capacity that you've got in front of you and that you're addressing this and having your staffing is a big part of that. Just managing the whole caseload is important and I think it's important for this committee especially, because it should be a little more legislative heavy than it is today but it's important for the members and the legislature to understand where you're at on the KPMs and budget having knowledge of the reasons why this meeting is so important for us to do as we are in those legislative conversations and it's helpful for people to understand and for legislators to understand. I don't see any policy issues that I'm aware of other than this one. Unless you've heard of any issues I'll turn it over to Senator Sollman, maybe she has something.

Sen. Sollman: Thanks Chair Holvey, I really just wanted to add to that and it's not that I've seen anything different. I just know that I appreciate this information and think that this is very valuable and I feel like I'm not certain that this happens. Please correct me if I'm wrong, but I think it would be amazing to be able to have some sort of quick snapshot of something that we can provide to other legislators with links to be able for them to go into more in depth because our role of the folks that are on this committee is to then go back to our colleagues to be able to share with them, that's sometimes a missing link. It doesn't happen because some other fire comes through, or this that or the other. I think it would be good to be able to put something out that says, here's a recap of either the hearing or something. Then there's the legislators that are on this committee to be able to contact them and then they have your contact information for people that have questions. I think the biggest line of defense that we can do in making sure that we're keeping oversight and accountability going is communication. As long as we make those efforts then then things can continue to improve. Thank you so much for allowing me to give those comments.

Rep Holvey: Thank you, Senator Sollman. I think that was exactly the point I was trying to make is that the communication between the legislators on this particular Oversight Committee with the legislators that are on the Budget Committee are really important to have, because not many legislators even know what the office of Administrative hearings is and what it does. It is extremely important to processing issues and the conflicts that arise between our agencies and the public, and how do we solve those things. This agency is incredibly important because that's where it happens.

Sen Sollman: I will just say Chair Holvey for the record, how much of a valued member that you have been and how much I appreciate that anytime I have additional questions that you have been very patient and forthright with me. I really appreciate you and I think it will be a miss to not have you on the committee, but I will continue to know that you will be able to answer any questions that I may have in the future. So thank you.

Rep. Holvey: Thank you.

Mr. Shuba: Representative Holvey I wanted to say it's been my pleasure to work with you over the years. I too will miss you on this committee.

Rep Holvey: Thanks, Kevin, and I appreciate you sticking with this committee for as long as you have. It's a quite stellar to find somebody from the private sector who continues to see the wisdom of participating in something like this.

Mr. Rhoades: Once again, thank you to this committee. You are essential to the work that we do. We appreciate so much all of your commitment to this work and to once again just say how much we're going to miss you Rep. Holvey. Thank you very much for your service all these years on the committee.

Rep. Holvey: I'm sure Rep. Sosa will do a very good job in replacing me I wish you all the best of luck. This is an extremely important exercise of oversight that needs to happen and especially the Department of Justice who doesn't speak all that often. This information is vital to their functioning as well as they watch cases coming towards them. So with that, thank you very much all of you. I'm going to adjourn the office of Administrative Hearings Oversight Committee for this August 30th, 2023. Thank you very much.

Public Comments

None

Adjournment

There being no further business meeting adjourned at 10:50 am.