
OregonSaves
Rulemaking Advisory Committee
Meeting Minutes:
June 14, 2017
9am – 11am

RAC members present:

David Bell, Oregon ABLE program
Tim Bernasek for Jenny Dresler, Oregon Farm Bureau
John Burton, Emerald Staffing
Arin Carmack, Cardinal Services
David Craig, Summit Staffing Solutions
Melissa Craig, Summit Staffing Solutions
David Genz, Oregon Employment Department
Dick Schwarz, retired, former Executive Director AFT
Matt Swanson, SEIU
Tana Thomson for Anne Donovan, Xenium
Mary Williams, retired, former Deputy Attorney General
Cory Streisinger, Liaison and Member, Oregon Retirement Savings Board

Oregon State Treasury staff present:

Lisa Massena, Executive Director, OregonSaves
Joel Metlen, Public Engagement Manager, OregonSaves
Kim Olson, Senior Policy Advisor
Jennifer Peet, Director of Legal Affairs
Missy Simpson, Executive Assistant

The Rulemaking Advisory Committee (RAC) meeting began at 9:00 am. Kim Olson (Senior Policy Advisor) welcomed the committee. Lisa Massena (Executive Director, OregonSaves), initiated an around-the-room introduction.

Agenda Item 1: Progress and Status Update:

Lisa Massena provided a refresher on the OregonSaves program: need for, structure of, and investments available through the program. OregonSaves has designed two pilot programs, the first being a small pilot, and the second will be the larger pilot in October. Afterwards, OregonSaves will begin with employers in waves in late 2017. The first funding from the first wave of employers will take place in January 2018. The waves will give OregonSaves a chance to continue fine-tuning the program. Pilot one is active right now with first funding expected shortly after July 1.

Agenda Item 2: Rules – Detailed Review:

Rulemaking changes are required to have a fiscal impact statement, so the RAC will be used for guidance and input regarding the potential ramifications of changes in the rules, including potential adverse economic impact on small businesses. Small business in this context would be employers with

50 or fewer employees. Lisa Massena turned the meeting over to Kim Olson, who reviewed each of the following rule areas and proposed changes for discussion.

a. Technical changes (Rules 170-080-0015, 0030, 0055, 0065)

Rules Discussion:

170-080-0015 (Employer Registration and Enrollment (2) Enrollment)

The original text reads “In order to allow for employees to establish an IRA through an automatic enrollment process, the Board shall establish procedures with the program administrator for the execution or adoption of such documents as are necessary or appropriate to establish an IRA for such employee.” Following review, the Program Service Provider and Treasury’s legal counsel asked for an additional sentence to be added, which is, “If the Employee has not established an IRA after notice and an opportunity to opt out has been sent to the Employee using the contact information on file with the Program, an IRA will be established for such Employee at the Board’s directive.” This will make it very clear the Board is able to establish an account on behalf of an individual that does not take action. This makes sure that auto-enroll functions.

Cory Streisinger (ORSP Board) clarified that individual Board action is not needed to establish each individual account, which is one way of reading the proposed language. Lisa Massena commented the rule is not intended to read that way and that the process will not work that way; language to be further reviewed as needed.

No adverse fiscal impact.

Rules Discussion:

170-080-0030 (Standard and Alternative Elections for Contributions; Automatic Increases; Ceasing Contributions; Requesting Participation (2) Alternative Elections (a))

The change is a proposed deletion of “receipt of the informational materials provided by the Facilitating Employer.” Change to “enrollment in the Program.” The change is recommended because when inserted on a timeline, there was a question about whether activities were lining up correctly. The RAC had concerns using the word “enroll” for this advance activity, so Kim Olson along with the RAC agreed that in the interim, staff would look at the language to see if terms are being used correctly and to propose alternate language if needed.

Rules Discussion:

170-080-0055 (Distribution of Materials to Employees (1))

Deletion of “At least 60 days before the Initial Enrollment Date.” A timeline problem appears to occur with this rule. It is now proposed to read: “The Program Administrator will provide a Facilitating Employer a set of information materials about the Program immediately upon completion of the Facilitating Employer’s registration in the online portal.”

David Bell (OST) noted that this would be done electronically through Ascensus system. If there was a scenario where their system is delayed, that would go against the rules being set.

Kim Olson suggested removing “immediately” and say “upon completion,” or take out the work “immediately” only.

No adverse fiscal impact.

Rules Discussion:
170-080-0065 (Confidentiality (4) Disclosure)

Proposed: replace the word “aggregated” with the word “anonymized.”

Cory Streisinger did not like the word “anonymized” and questioned if it was a word. Paloma Sparks (BOLI) suggested simpler words be used where possible in the rules. To be evaluated further.¹

No adverse fiscal impact.

b. Add policy concepts (Rules 170-080-030, 0045)

Rules Discussion:
170-080-0011 (Executive Director)

New rule section proposed for addition, Executive Director. This provides the executive director is responsible for the day-to-day operations of the Program. Language proposed is similar to that used in rules by the State’s 529 College Savings Plan.

Rules Discussion:
170-080-0030 (Standard and Alternate Elections for Contributions; Automatic Increases; Ceasing Contributions; Requesting Participation (2) Alternate Elections (ii))

Proposed new language was a policy concept approved by the Board earlier this spring but was not in the earlier rules because the program service provider could not offer this in their system at the time. Staff is now proposing: (ii) “at an initial contribution rate different from the Standard Elections, expressed as a specific dollar amount. The minimum contribution rate is \$1.00 and maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits.” Besides contributing at a specific percentage, you can also contribute a specific dollar amount.

Cory Streisinger suggested changing the phrase to say “expressed as a specific whole dollar amount.” When using percentages, there will never be a round dollar amount.

Melissa Craig (Quest Staffing), suggested “1% to 100% or any whole dollar amount as deemed appropriate or by preference of the employee”.

No adverse fiscal impact.

¹ From Wikipedia, for the use of the RAC: “Data anonymization is a type of information sanitization whose intent is privacy protection. It is the process of either encrypting or removing personally identifiable information from data sets, so that the people whom the data describe remain anonymous.” The term is commonly referenced online related to this type of activity.

Rules Discussion:
170-080-0035 (Contributions)

If dollars are an electable choice, they must also be addressed in the Contributions section of the rules, including consideration of the application of auto-escalation.

John Burton (Emerald Staffing) suggested that there could be a financial impact related to auto-escalation in general (this impact was considered as part of an earlier rulemaking process). Melissa Craig asked about the rationale of using a January 1 date vs. using an employment anniversary date.

Lisa Massena explained that feedback from earlier RAC meetings was that employers did not want to process rate changes continually, and that they preferred the one date a year approach.

No adverse fiscal impact.

c. Definition adjustments:

Rules Discussion:
170-080-0010 (Administration (2) Definitions (1))

Added a definition of Executive Director.

No adverse fiscal impact.

Agenda Item 3 Rules – Discussion:

Rules Discussion:
170-080-0025 (Joint Employment, Co-Employment and Tri-Party Employment Circumstances)

Kim Olson presented the RAC with the definition of Jointly Employed Employees as used by BOLI for determination of Oregon Sick Time (OAR 839-007-0005), to help start the conversation for the relevant considerations related to Joint, Co-, and Triparty employment.

Cory Streisinger reminded the RAC that one goal of OregonSaves has been use existing definitions and to cross-reference to them, where possible not creating new definitions for employers will need to figure out.

Arin Carmack (Cardinal Services) recommending not using this rule, commenting that the RAC needs to determine what a PEO is and what an employee leasing company is. The term ‘jointly employed’ has been problematic and needs to be defined. This rule needs to be simple. The responsible party for joint employment should be the employer of record, which is the person filing the taxes and FEIN number is being used, and using the original start date for employment.

A vigorous discussion ensued.

Lisa Massena wanted to clarify what was being heard was that employer of record and primary employer are the same. Cory Streisinger did not like the term primary employer, and suggested

looking for a term that means the party who is legally responsible for remitting the employer related money, not the function but providing the funds to cover the payroll deducted savings. Another issue the RAC discussed was determining when a person is in fact a new hire or when a person is still an employee but has moved into a new position. One attendee commented, 'This has been a struggle with building trades.' Related comments included these:

- There are many employees that are continuously employed but their assignments change, or there are short term hires, meaning an individual is hired for a few months and then they move on to a new employer.
- Having someone wait 90 days to enroll in OregonSaves would not support temp-to-hire. They would never save if there is a 90 day wait.
- Another issue are employees that have same employer but are employed sporadically. May go on unemployment for a month, but then come back to work with same employer. Discussion here related to how gaps in service are recognized for purposes of employment with agreement that this issue will be addressed at the next RAC meeting.

Agenda Item 4: Public Comment:

Steve Resnikoff, Premier Retirement Services, Inc., commented on the issue of converting the dollar deferral to auto-enroll, stating, 'If you convert the dollar amount to auto-escalate, it may concern employees.'

Kim Olson clarified how the auto-escalate would work. If you are enrolled in the program using standard elections, then you will start saving at 5% and auto-escalate. Savers who prefer instead to save a specific dollar amount will have to take an action, such as coming into the system to your account in order to elect a specific dollar amount; the decision to auto-escalate from there, or not, would be among the related choices:

- Specific dollar amount, auto-escalating to the next % savings level
- Specific dollar amount and no auto-escalate

Courtney Zenter, NAPEO, focused on the co-employment situation, commenting: When it comes to the different requirements that employers have under OregonSaves, we tend to think it best that the client employers, the ones that the employees are actually working for, be the ones who are ultimately responsible for all the tasks that were outlined for us earlier. That doesn't mean that PEO's won't perform these for their clients; it might be better for the PEO's to do this on behalf of their client employers, but in a couple of our comment letters we submitted earlier, we tried to illustrate a couple of reasons why we think that makes sense. A couple of things to keep in mind are that a client-employer might terminate a relationship with their PEO. What happens if the PEO is being treated as the employer and but the client-employer changes PEOs – and suddenly that employee is no longer associated with the PEO even though they are still working for the same company - will there be some disruption? Additionally, almost all PEO's offer some form of a retirement plan to their client employers. There might be a case, maybe due to cost-concern, where a small employer might actually turn down that offer from their PEO to offer a 401k for their employees. Where does that leave those employees? If they are technically working for the PEO, they would be treated as having a plan offered to them but that is not actually the case for their small employer.

Melissa Kelly, NAPEO, added that what Courtney outlined is consistent with the rules that were adopted relative to paid sick leave, which was discussed earlier, and with the federal family leave act. Cory Streisinger asked to clarify in this situation, whose EIN is associated with the workers payroll. Melissa Kelly confirmed it would be the PEO's FEIN.

Lisa Massena commented on a related concept. Employees of a PEO who is considered the employer of record, and who work for an employer who has not chosen to use the PEO plan being offered, would go into the opt-in category.

Arin Carmack wondered if all leased clients could be enrolled separately for either OregonSaves or a PEO's 401k, which Lisa explained would related to how the definition of Employer is ultimately resolved.

Kim Olson informed the RAC that they would reconvene on July 6 to discuss these rules. In the meantime, Lisa Massena asked the RAC that if they have statutory examples that are relevant, to send them ahead of time so they can be used in the upcoming conversations.

The meeting was adjourned at 11:00 am.