

OFFICE OF THE SECRETARY OF STATE  
DENNIS RICHARDSON  
SECRETARY OF STATE  
  
LESLIE CUMMINGS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
MARY BETH HERKERT  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**OST 5-2018**  
CHAPTER 170  
OREGON STATE TREASURY

**FILED**  
10/16/2018 12:57 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Amending 170-080-0010, 170-080-0015, and 170-080-0020

EFFECTIVE DATE: 10/20/2018 THROUGH 04/10/2019

AGENCY APPROVED DATE: 10/15/2018

CONTACT: Kimberly Olson  
503-373-7609  
kim.olson@ost.state.or.us

900 Court St  
Salem, OR 97301

Filed By:  
Kevin Willingham  
Rules Coordinator

**NEED FOR THE RULE(S):**

Conform Rules to current practice allowing two methods of exemption from the Program.

**JUSTIFICATION OF TEMPORARY FILING:**

At the October 2018 Board meeting, staff discovered that one important rule change was overlooked in the most recent permanent rulemaking process. The Program newly implemented a second method for employer exemption from the Program, which involves checking the Department of Labor's 5500 database and matching filers with Oregon employers. The Program has already sent thousands of notices to Oregon businesses stating that they are presumed exempt from the Program through this process. Failure to immediately amend the rules will put these employers in a situation where they can comply with the notice and be out of compliance with the Program rules. This may cause confusion for employers, increasing call volumes to our call center and taking up employer's time unnecessarily to determine that if they are in compliance with the state mandate. Amending the rules temporarily will allow the Program to convey the correct message, while we simultaneously run a full permanent rulemaking round to collect stakeholder input and public comment prior to finalizing the rules.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

ORS 178.200 to 178.245 available at: [https://www.oregonlegislature.gov/bills\\_laws/ors/ors178.html](https://www.oregonlegislature.gov/bills_laws/ors/ors178.html)

**RULES:**

170-080-0010, 170-080-0015, 170-080-0020

AMEND: 170-080-0010

RULE TITLE: Administration

RULE SUMMARY: Amends definition of and Exempt Employer

**RULE TEXT:**

(1) Policy. The Board intends that, consistent with ORS Section 178.210(1)(p), the Program be operated, and these rules be construed, in a manner consistent with applicable guidance provided by the U.S. Department of Labor relating to

payroll deduction IRA programs that are not pension plans under Title I of the Employee Retirement Income Security Act (ERISA) including, but not limited to, 29 CFR Sections 2509.99-1, 2510.3-2(d).

(2) Definitions. All capitalized terms used in these rules shall be as defined in the Act. Where a conflict is found to exist between a definition stated in these rules and the corresponding definition in the Act, the statutory definition shall apply. As used in these rules, unless the context indicates otherwise:

- (a) "Act" means ORS 178.200 to 178.245, as amended from time to time.
- (b) "Automatic Contribution Plan" means a program that allows a Participating Individual to contribute funds to a Program Roth or Traditional IRA at regular intervals through electronic transmission. Contributions shall be deemed to be made at regular intervals if they are made at least quarterly.
- (c) "Beneficiary" means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of a Program IRA.
- (d) "Board" means the Oregon Retirement Savings Board established in ORS 178.200(1).
- (e) "Certificate of Exemption" means a truthful statement by an authorized representative of an Employer that it offers a Qualified Plan to some or all of its Employees.
- (f) "Client Employer" means a client of a Worker Leasing Company that obtains services of Leased Workers as defined in OAR 436-050-0005.
- (g) "Code" means the Internal Revenue Code and any regulations, rulings, announcements, or other guidance issued thereunder, as amended.
- (h) "Compensation" means W-2 wages, as defined in 26 CFR 1.415(c)-2(d)(4).
- (i) "Distribution" means any distribution of funds from an IRA established pursuant to the Program.
- (j) "Employee" means any person 18 years of age and older working in an Employment, as defined herein.
- (k) "Employer" means any employing unit which employs one or more individuals in an Employment in each of 18 separate weeks during any calendar year, or in which the employing unit's total payroll during any calendar quarter amounts to \$1,000 or more.
- (l) "Employer of Record" means the business associated with the Business Identification Number (BIN), or if unavailable, the Federal Employer Identification Number (FEIN), listed on an Employee's or Participating Employee's W-2.
- (m) "Employment" means any employment subject to ORS Chapter 657 provided that, notwithstanding the exemptions from the definition of Employment contained in Chapter 657, for the purposes of the Program, Employment includes:
  - (A) Agricultural labor, as defined in ORS 657.045; and
  - (B) Commissioned positions, as defined in ORS 657.085, 657.087(1) and (2), and 657.090.
- (n) "Enrollment Date" means either:
  - (A) the Initial Enrollment Date, for Participating Employees hired on or before the Facilitating Employer's required Registration Date; or
  - (B) a date not more than 60 days following start of employment, for Participating Employees hired after the Facilitating Employer's required Registration Date.
- (o) "Executive Director" means the Executive Director of the Oregon Savings Network.
- (p) "Exempt Employer" means an Employer who offers a Qualified Plan to some or all of its Employees; and
  - (A) has filed a valid and current Certificate of Exemption pursuant to procedures established by the Board; or
  - (B) has received a notice of presumed exemption, as provided in OAR 170-080-0020.
- (q) "Facilitating Employer" means an Employer whose Registration Date has passed and who is not an Exempt Employer.
- (r) "Initial Enrollment Date" means the date not more than 60 days after the Facilitating Employer's required Registration Date, by which a Facilitating Employer must initially enroll its Participating Employees.
- (s) "IRA" means the individual retirement account established by a Participating Individual or by or for a Participating Employee under the Program.
- (t) "IRS" means the Internal Revenue Service of the United States Treasury Department.
- (u) "Minimum Initial Contribution" means the minimum Non-Payroll Contribution required for a Participating Individual to establish a Program IRA.
- (v) "Non-Payroll Contributions" means contributions other than Payroll Deduction Contributions, rollover

contributions, or transfer contributions.

(w) "Number of Employees" means the number of employees as submitted on the Employer's Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, in accordance with OAR 170-080-0015.

(x) "Participating Employee" means any person who is an Employee of a Facilitating Employer, enrolled in the Program, maintains a Program IRA and is not a Participating Individual..

(y) "Participating Individual" means any person who is in the Program independent of an employment relationship with a Facilitating Employer, maintains a Program IRA, and is not a Participating Employee.

(z) "Payroll Date" means the date that an Employee's Compensation is paid to the Employee by the Employer through the payment of cash, issuance of a check, electronic funds transfer or other method.

(aa) "Payroll Deduction Contributions" means contributions made by a Participating Employee or Participating Individual pursuant to a payroll deduction.

(bb) "Program" means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1).

(cc) "Program Administrator" means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act.

(dd) "Qualified Plan" means a retirement plan qualified under the Code section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p), section 413(c), section 414(f), or a governmental plan qualified under section 457(b) of the Code. For purposes of this rule, a payroll deduction IRA program as defined in 29 CFR 2510.3-2(d) is not a Qualified Plan.

(ee) "Registration Date" means, for each Employer, the date by which the Employer is required to register with the Program or file a Certificate of Exemption, in accordance with OAR 170-080-0015.

(ff) "Roth IRA" means an individual retirement account as defined in Code section 408A.

(gg) "Standard Elections" means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in OAR 170-080-0030.

(hh) "Target Date Fund" means a professionally-managed fund containing a mix of investments that invests based on the employee's age and/or projected retirement date.

(ii) "Traditional IRA" means an individual retirement account as defined in Code section 408(a).

(jj) "Worker Leasing Company" (also known as a Professional Employer Organization or PEO) means a person who provides workers, by contract and for a fee, to work for a client and is licensed as a Worker Leasing Company by the Oregon Department of Consumer and Business Services.

STATUTORY/OTHER AUTHORITY: ORS 178.200–178.245

STATUTES/OTHER IMPLEMENTED: ORS 178.200–178.245

AMEND: 170-080-0015

RULE TITLE: Employer Registration and Enrollment

RULE SUMMARY: Amends rule to allow clarify process for a notice of presumed exemption.

RULE TEXT:

(1) Registration

(a) Except as provided in subsection (e), each Employer shall register with the Program or file a Certificate of Exemption on or before the Registration Date.

(b) Unless otherwise permitted by the Program Administrator, the Registration Date for an Employer shall be as follows:

(A) An Employer employing one hundred (100) or more Employees: November 15, 2017

(B) An Employer employing at least fifty (50) but no more than ninety-nine (99) Employees: May 15, 2018

(C) An Employer employing at least twenty (20) but no more than forty-nine (49) Employees: December 15, 2018

(D) An Employer employing at least ten (10) but no more than nineteen (19) Employees: May 15, 2019

(E) An Employer employing at least five (5) but no more than nine (9) Employees: November 15, 2019

(F) Client Employers, as defined in 170-080-0010: November 15, 2019

(G) An Employer employing four (4) or fewer Employees: May 15, 2020

(c) In determining the Number of Employees for the purposes of this section, Employers shall use data as submitted on the 2016 4th quarter Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, except under the following circumstances:

(A) An Employer who first meets the definition of Employer after January 1, 2017 will use the number of employees submitted on the Employer's most recently filed Form OQ;

(B) An Employer with no Employees reported on Form OQ will have a Registration Date of May 15, 2020; or

(C) At the Program Administrator's discretion, an Employer with a valid business reason may use data from a more recent Form OQ.

(d) To register with the Program, a Facilitating Employer shall use the internet portal established by the Program Administrator to provide the following information:

(A) Employer name and assumed business name, if any;

(B) Employer Identification Numbers (Federal Employer Identification Number and Business Identification Number);

(C) Employer mailing address;

(D) Name, title, telephone number and email address of an individual designated by the Employer as the Program's point of contact;

(E) Number of Employees; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(e) An Employer who received a notice of presumed exemption from the Program Administrator, as specified in OAR 170-080-0020, is not required to take any further action as long as it continues to offer a Qualified Plan to some or all of its Employees.

(f) New Employers: the Registration Date for an Employer who first meets the definition of Employer after July 1, 2017, shall be the later of:

(A) the date specified in subsection (1)(b) above, or

(B) 90 days after the Employer first meets the definition of Employer. (g) A Facilitating Employer who lacks access to the internet may register with the Program by alternate means established by the Program Administrator.

(2) Employee Enrollment through a Facilitating Employer

(a) On or before the Initial Enrollment Date, and on or before the Enrollment Date for each subsequently hired Employee, a Facilitating Employer shall enroll its Employees using the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator. The Facilitating Employer shall provide the following information for each Employee no more than 30 days after the Registration Date (for Employees hired on or before the Registration Date) and no more than 30 days following the start of Employment (for Employees hired after

the Registration Date):

(A) Full legal name;

(B) Social security number or taxpayer ID number;

(C) Date of birth;

(D) Mailing address;

(E) Employee's designated email address; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(b) 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. If the Employee has not opted out after notice of the opportunity to opt out was sent to the Employee using the contact information on file with the Program, and the opt-out period has lapsed, then an IRA will be established for such Employee pursuant to directives and procedures established by the Board.

(c) Automatic Employee enrollment occurs 30 days after the Facilitating Employer provides the information in OAR 170-080-0015(2)(a), unless the Employee and Facilitating Employer agree to an earlier date.

STATUTORY/OTHER AUTHORITY: ORS 178.200–178.245

STATUTES/OTHER IMPLEMENTED: ORS 178.200–178.245

AMEND: 170-080-0020

RULE TITLE: Employer Exemptions

RULE SUMMARY: Amend rule to allow two methods of exemption from the program

RULE TEXT:

- (1) An authorized representative of an Employer may file a Certificate of Exemption with the Program by certifying, through the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator, that the Employer offers a Qualified Plan to some or all of its Employees.
- (2) A Certificate of Exemption is valid for three (3) years from the date the Employer files the Certificate with the Program Administrator, so long as the Employer continues to offer a Qualified Plan to some or all of its Employees. A Certificate of Exemption may be renewed by following a process of recertification to be established by the Board not later than December 31, 2019.
- (3) The Program Administrator may, from time to time, compare Form 5500 (Annual Return/Report of Employee Benefit Plan) filings with the database of Employers and Exempt Employers.
  - (a) For an Employer identified as offering a Qualified Plan to some or all of its Employees, or an Exempt Employer identified as continuing to offer a Qualified Plan to some or all of its Employees, the Program Administrator may send written notice of presumed exemption from the Program.
  - (b) If the Program Administrator determines that the Employer or Exempt Employer no longer offers a Qualified Plan to some or all of its Employees, or is not identified as having a current Form 5500 on file with the U.S. Department of Labor, the Program Administrator may send written notice directing the Exempt Employer to either file a Certificate of Exemption or register with the Program.
- (4) Exemption is valid so long as the Employer or Exempt Employer continues to offer a Qualified Plan to some or all of its Employees. If the Employer no longer offers a Qualified Plan to some or all of its Employees, it is required to notify the Program Administrator and register with the Program on or before the Registration Date, as listed in this OAR 170-080-0015.

STATUTORY/OTHER AUTHORITY: ORS 178.200 to 178.245

STATUTES/OTHER IMPLEMENTED: ORS 178.200–178.245