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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 170
OREGON STATE TREASURY

FILED

11/21/2022 3:26 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Specifying both employer registration deadlines and an annual compliance wave date.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 01/20/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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19290 SW Upper Boones Ferry Rd
Tigard, OR 97224

Filed By:
Kevin Willingham
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 01/18/2023

TIME: 10:00 AM

OFFICER: Sabra Purifoy

ADDRESS: Oregon State Treasury
16290 SW Upper Boones Ferry Road
Tigard, OR 97224-7220

SPECIAL INSTRUCTIONS:

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

NEED FOR THE RULE(S)

The rules, as currently written, provide flexibility for the Oregon Retirement Savings Board to identify a date(s) for the final wave of employer registration deadlines as a date on or after October 1, 2021 to be published on the program website. The amendment would provide clarity for employers by specifically identifying the employer registration deadline dates in the rules to ensure clear and consistent communication with employers. Oregon employers are required by statute to comply with requirements to facilitate the program. The proposed rules clarify the process for compliance and codify the authority of the Oregon Retirement Savings Board to file a complaint with the Commissioner of the Bureau of Labor and Industries.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

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

These rules seek to codify the deadlines and compliance processes for employers required to facilitate OregonSaves. Regulated employers and the public will benefit from the increased clarity. There are no changes to the practical

implementation or requirements under the existing law and rules, and therefore, there is no expected impact on racial equity as it relates to compliance and facilitation of the program in Oregon. That being said, the OregonSaves program was established to provide a retirement savings vehicle for communities that have not historically had such access. Inasmuch as these rules amendments are expected to increase employer compliance with the program, there may be a positive impact on the access to such savings plans by certain socially and economically disadvantaged groups.

FISCAL AND ECONOMIC IMPACT:

The specification of both employer registration deadlines and compliance do not add additional requirements, but do provide clarity for employers. As a result, the specification of the registration deadlines and compliance do not have a fiscal and economic impact.

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).

The specification of both employer registration deadlines and compliance will not economically affect businesses. There are an estimated 56,000 small businesses (1-4 employees) from a variety of industries that fall into the last wave for which we are clarifying the employer registration deadlines. There is no increased administrative activity and no expected cost of services as a result of the proposed rule amendments beyond the current requirements for employers specified in the rules.

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

Small Businesses were intricately involved in drafting the original OregonSaves rules and in the development of the program overall. In an effort to provide clarity in communications to the Small Business community, we decided it would be best to identify specific dates for the employer registration deadlines and compliance with this rules amendment.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Oregon Retirement Savings Board will discuss the rules amendment during a public meeting and provide the opportunity for public input.

RULES PROPOSED:

170-080-0015, 170-080-0066

AMEND: 170-080-0015

RULE SUMMARY: Provides clarity for employers by specifically identifying the employer registration deadline dates in the rules to ensure clear and consistent communication with employers.

CHANGES TO RULE:

170-080-0015

Employer Registration and Employee Enrollment¶¶

(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~~An Employer, as defined in 170-080-0010: A time to be determined by the Board, but no sooner than October 1, 2021. Date to be published on program website employing three (3) or four (4) Employees: March 1, 2023.¶
- (G) An Employer employing ~~four~~one (4) or ~~fewer~~two (2) Employees: ~~A time to be determined by the Board, but no sooner than October~~ July 31, 2023.¶
- (H) ~~Client~~ Employers, as defined in 170-080-0010: July 31, 2023. Date to be published on program website.¶
- (I) An annual wave of new Employers: July 31 of each year. ¶
- (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 to be determined by the Board, but no sooner than October 1, 2021. Date to be published on the program website; 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~~ July 31 of each year.¶
- (g) The Registration Date for an Exempt Employer that ceases to offer a Qualified Plan to some or all of its Employees shall be the later of:¶
- (A) the date specified in subsection (1)(b) above, or¶
- (B) 90 days after the Exempt Employer ceases to offer a Qualified Plan to some or all of its Employees.¶
- (h) 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 to 178.245

Statutes/Other Implemented: ORS 178.200 to 178.245

ADOPT: 170-080-0066

RULE SUMMARY: Provides that the Oregon Retirement Savings Board may file a complaint with the Commissioner of the Bureau of Labor and Industries.

CHANGES TO RULE:

170-080-0066

Board Authority

If, after three attempts to bring an Employer into compliance, the Board has reasonable grounds to believe that an Employer has not registered with the Program to facilitate payroll deductions in compliance with ORS 178.250, the Board may file a complaint requesting that the Commissioner of the Bureau of Labor and Industries investigate the Employer in accordance with ORS 659A.820.

Statutory/Other Authority: ORS 178.200 to 178.255

Statutes/Other Implemented: ORS 659A.820, ORS 178.205(h), ORS 178.245, ORS 178.250