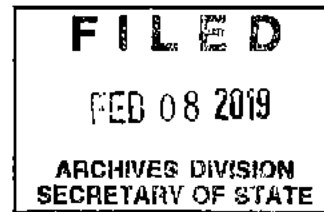




# Oregon

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

The Oregon Secretary of State  
Attn: Administrative Rules Section  
800 NE Summer St., Salem, OR 97310



RE: 5-year rule-review

To whom it may concern,

Please find attached 5-year rule reviews for OAR's 839-003-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0206, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400, 839-006-0291, 839-006-0292, 839-006-0340, 839-006-0345, 839-006-0350, 839-006-0480, 839-009-0265, 839-009-0370, 839-009-0380, 839-009-0390, 839-009-0400, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0440, 839-009-0450, 839-009-0460, 839-010-0300, 839-010-0305, and 839-010-0310 in compliance with ORS 183.405.

Sincerely,

Benedikt Springer

CC: Small Business Advisory Committee, Rulemaking Advisory Committees

**PORTLAND**  
800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

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Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0140

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?  
Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller,

800 NE Oregon St. Suite 1045, Portland, OR 97232-2180

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 839-006-0332; 839-005-0138; 839-005-0140; 839-005-0160; 839-005-0170;

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, and SB 786, Oregon Legislative Assembly 2009.

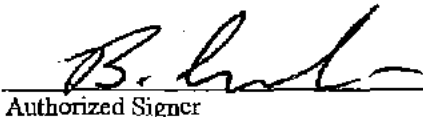
Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave).

**RULE SUMMARY**

The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)



Brad Avakian

2/24/10

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	971-673-0784
Rules Coordinator	Telephone

800 NE Oregon St. #1045, Portland, OR 97232  
Address

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions.  
**AMEND:** Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.

Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Amy K. Klare, Administrator, Civil Rights Division

October 15, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries – Civil Rights Division  
Agency and Division

839  
Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.


c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.

  
Signature

Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date

## Veterans' Affairs Virtual Advisory Committee

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Irv Fletcher, Vice-Chair  
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Paula Brown, Deputy Director  
Oregon Department of Veterans' Affairs  
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Salem, OR 97301-1285

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Committee**

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Legislation and Policy Analyst  
Seniors and People with Disabilities  
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Salem, OR 97301  
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Portland OR 97205

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OSB Labor and Employment Section  
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Portland, Oregon 97214-2488

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Sen. Floyd Prozanski  
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Eugene, OR 97440

Senate Judiciary Committee Counsel  
Anna Braun  
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Salem, OR 97301

House Judiciary Committee Chair  
Rep. Jeff Barker  
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Salem, OR 97301

House Judiciary Committee Counsel  
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Chair  
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Milwaukie, OR 97269

House Human Services Committee  
Administrator  
Sandy Thiele-Cirka  
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Senate Rules Committee Chair  
Sen. Richard Devlin  
900 Court St. NE, S-316  
Salem, OR 97301

Senate Rules Committee Administrator  
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Salem, OR 97301

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Salem, OR 97301

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Salem, OR 97301

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Salem, OR 97301

Sen. David Nelson  
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Salem, OR 97301

Sen. Jeff Kruse  
636 Wild Iris Ln.  
Roseburg, OR 97470

Sen. Laurie Monnes Anderson  
900 Court St. NE, S-413  
Salem, OR 97301

Sen. Bruce Starr  
22115 NW Imbrie Dr. #290  
Hillsboro, OR 97124

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division	839
Marcia Ohlemiller	Administrative Rules Chapter Number
Rules Coordinator	(971) 673-0784
800 NE Oregon St., Ste. 1045, Portland, OR 97232	Telephone
Address	

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address

NPRM & Fiscal Impact in issue

BCI 11-2015 8-4-15

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0085

Date Rule Became Effective: July 1, 2010

Date Review Due: July 1, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. cf. 12-30-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Advisory Committee

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Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

ureau of Labor and Industries, Civil Rights Division 839  
Agency and Division Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232-2180 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION**

Implementing statutory enactments restricting use of employec's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Mon., May 3<sup>rd</sup>, 3:30 pm to 5:30 pm Portland State Office Building, 800 NE Oregon St. Portland, OR Rm 1-B Stefanie Plebanek  
Hearing Date Time Location Hearings Officer  
*Hearing site is accessible to individuals with disabilities. Auxiliary aids for individuals with disabilities are available upon request to Rules Coordinator at 971-673-0784 no later than 10 days prior to hearing date.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
ADOPT: Division 5 rule numbers as needed.

AMEND: Division 5 rule numbers as needed.

RENUMBER: Division 5 rule numbers as needed.

AMEND & RENUMBER: Division 5 rule numbers as needed.

Stat. Auth. : ORS 659A.805

er Auth: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

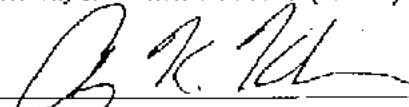
**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and employers for whom employees' credit history is substantially job-related.

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

May 3, 2010 at 5:30 pm

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Amy K. Klare

March 12, 2010

Signature

Printed name

Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless a deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing statutory enactments restricting use of employees' credit history for employment purposes.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rules regulating the use of credit history in employment.

Statutory Authority: ORS 659A.805

Other Authority: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

Need for the Rule(s): The rules are needed to implement the legislation.

Documents Relied Upon, and where they are available: SB 1045, available on the Oregon Legislature website.

Fiscal and Economic Impact: No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted laws that the proposed rules would implement will be in statutes on July 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for employers, because the proposed rule adoptions and amendments would implement and clarify laws already enacted, making it less likely that employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory adoptions and amendments the rules for the most part would implement will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers, and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. The proposed rules would merely implement provisions of previously-enacted laws, not add additional requirements

c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule? Small business representatives are being asked to comment on drafts of proposed rules.

Administrative Rule Advisory Committee consulted?: Yes

Signature



Amy K. Klare

Printed name

March 12, 2010

Date

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 1, 2010 by the

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia L. Ohlemiller

800 NE Oregon Street, Suite 1045, Portland, Oregon 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective July 1, 2010. Rulemaking Notice was published in the April 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085

Stat. Auth.: ORS 659A.805

Other Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and positions for which an applicant's or employee's credit history is substantially job-related.



Brad Avakian

June 1, 2010

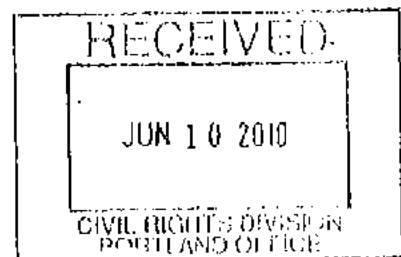
Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



## Employer Obtainment or Use of Credit History Information

839-005-0060

### Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.

(2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of OL 2010, Ch. 102 may file a complaint under ORS 659A.820 or may bring a civil action under ORS 659A.885.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces Oregon Law 2010, Chapter 102 (OL 2010, Ch. 102). These rules implement and interpret OL 2010, Ch. 102.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

839-005-0065

### Definitions

(1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.

(2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(6) "Substantially job-related" is defined in OAR 839-005-0080.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0070

Unlawful Discrimination

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) OL 2010, Ch. 102 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at OL 2010, Ch. 102(2). OL 2010(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(a) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0080

Substantially Job-Related

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;

**(A) Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or**

**(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.**

**Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805**

**Stats. Implemented: OL 2010, Ch. 102**

**839-005-0085**

**Enforcement & Retaliation**

**(1) An employer's duties and obligations under OL 2010, Ch. 102 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.**

**(2) An applicant or employee claiming a violation of OL 2010, Ch. 102 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.**

**(3) An applicant or employee claiming a violation of OL 2010, Ch. 102 may bring a civil action under ORS 659A.885.**

**(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OL 2010, Ch. 102.**

**(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OL 2010, Ch. 102, or to attempt to do so.**

**Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805**

**Stats. Implemented: OL 2010, Ch. 102**

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

**In the Matter of:**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

**Statutory Authority:** ORS 659A.805

**Other Authority:**

**Stats. Implemented:** ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**Need for the Rule(s):**

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

**Documents Relied Upon, and where they are available:**

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0076, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2689, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to Interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0080, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0180 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0180 and 839-005-0170 implement newly enacted legislation.

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

          Marcia Ohlemiller            
Rules Coordinator Name

          Marcia.L.Ohlemiller@state.or.us            
Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
ADOPT: 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

AMEND: 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohleniller*

Marcia Ohleniller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

839  
(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0208, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15



Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0160

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

BLI 3-2012, f. & cert. ef. 2-8-12

BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller,

800 NE Oregon St. Suite 1045, Portland, OR 97232-2180

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 839-006-0332; 839-005-0138; 839-005-0140; 839-005-0160; 839-005-0170;

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, and SB 786, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave).

**RULE SUMMARY**

The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)



Brad Avakian

Printed name

2/24/10

Date

Authorized Signer

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions.  
**AMEND:** Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.

Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Amy K. Klare, Administrator, Civil Rights Division

October 15, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

Secretary of State  
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries -- Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(B)):

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.



Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date

## **Veterans' Affairs Virtual Advisory Committee**

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Rep. Arnie Roblan  
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Sen. David Nelson  
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Salem, OR 97301

Sen. Jeff Kruse  
636 Wild Iris Ln.  
Roseburg, OR 97470

Sen. Laurie Monnes Anderson  
900 Court St. NE, S-413  
Salem, OR 97301

Sen. Bruce Starr  
22115 NW Imbrie Dr. #290  
Hillsboro, OR 97124

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on December 30, 2011 by the

Bureau of Labor and Industries	Date prior to or same as filing date 839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St Suite 1045, Portland, OR 97232
Rules Coordinator	Address
	Telephone
	971-673-0784

to become effective January 1, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**  
Conforms civil rights rules to provisions of IIB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**  
List each rule number separately (000-000-0000)  
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-005-0075, 839-005-0125, 839-005-0130, 839-005-0135, 839-005-0175, 839-009-0364

**AMEND:** 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

**RENUMBER:** 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

Stats. Implemented: IIB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.



Authorized Signer	Brad Avakian	December 30, 2011
	Printed name	Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

CORRECTED

Secretary of State

NOTICE OF PROPOSED RULEMAKING\*

A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlertiller

(971) 573-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

RULE CAPTION

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 839-005-0075

AMEND:

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

REPEAL:

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

Statutory Authority:

ORS 659A.805

Other Authority:

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

Statutes Implemented:

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

RULE SUMMARY

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed
12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10p.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday. ARC 923-2003

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Conforming civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Statutory Authority:

ORS 659A.805

Other Authority:

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

Stats. Implemented:

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

Need for the Rule(s):

The proposed rules and amendments would implement newly-enacted statutes clarifying and expanding civil rights in employment relating to jurors, crime victims, disability, credit history and attending criminal proceedings.

Documents Relied Upon, and where they are available:

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; and clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave and discrimination provisions), available on Oregon Legislature website; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885, available in ORS publications.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The newly enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2012 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public and private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

State agencies and units of local government will be subject to rules implementing HB 2036, HB 2828 and HB 3482. Fiscal or economic impact would result from those laws, and not the proposed rulemaking. A positive impact is anticipated for the public, expanding protections for employees who are serving on juries and who are victims of criminal harassment.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated because the proposed changes implement provisions of existing law. Existing crime victims rules call for some additional recordkeeping, but the newly enacted laws are not anticipated to substantially increase this.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

If not, why?:

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No

The proposed rule amendments and adoptions would implement statutory specifications over which BOLI has no discretion.

12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10 PM
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

RECEIVED

FEB 22 2012

Secretary of State  
Certificate and Order for Filing

PERMANENT ADMINISTRATIVE RULES

CIVIL RIGHTS DIVISION  
PORTLAND OFFICE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 7, 2012 by the

Date prior to or same as filing date  
839-000-0000

Bureau of Labor and Industries  
Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St Suite 1045, Portland, OR 97232  
Rules Coordinator Address

971-673-0784  
Telephone

to become effective February 8, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin \*\*  
Date upon filing or later Month and Year

RULE CAPTION

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0075, 839-005-0130, 839-005-0135, ~~839-000-0264~~

*MM FEB. 20*

AMEND: 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

RENUMBER: 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

Stat. Implemented: HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.



RULE SUMMARY

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

*Brad Avakian*

Brad Avakian

February 7, 2012

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



**CORRECTED**

Secretary of State

**NOTICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 **839-005-0075**

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0208; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAD 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.105 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a commissioner, manager or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>	<u>11-10-11 1:10p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>	<u>11-10-11 1:10p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0180, 839-005-0170, 839-005-0200, 839-005-0208

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 859A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 859A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 859A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.238, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to interns.

Amendments to 839-005-0208 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Law citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>	<b>839</b>
Agency and Division	Administrative Rules Chapter Number
<b>Marcia Ohlemiller</b>	<b>971-673-0784</b>
Rules Coordinator	Telephone

800 NE Oregon St. Ste. 1045 Portland, OR 97232

Address

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.



Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

**Bureau of Labor and Industries**

**839**

**Agency and Division**

**Administrative Rules Chapter Number**

**Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints**

**Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)**

**In the Matter of:**

**Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints**

**Statutory Authority: ORS 659A.805**

**Other Authority:**

**Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320**

**Need for the Rule(s):**

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

**Documents Relied Upon, and where they are available:**

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(B)):**

No fiscal or economic impact is anticipated from the proposed rule amendments.

**2. Cost of compliance effect on small business (ORS 183.336):**

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>839</u>
Rules Coordinator	Telephone
<u>600 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	<u>(971) 673-0784</u>
Address	

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0208, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**  
ORS 659A.805; 651.081

**Other Authority:**

**Statutes Implemented:**  
ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>
Rules Coordinator Name	Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0138

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by

Bureau of Labor and Industries, Civil Rights Division  
Agency and Division

839

Administrative Rules Chapter Number

Marcia Ohlemiller, 800 NE Oregon St. Suite 1045, Portland, OR 97232-2180

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: OAR 839-006-0332; 839-005-0138; 839-005-0140; 839-005-0160; 839-005-0170;

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, and SB 786, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave).

**RULE SUMMARY**

The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)



Brad Avakian

Printed name

2/24/10

Date

Authorized Signer

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. #1045, Portland, OR 97232
Rules Coordinator	Address
	Telephone

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing ADOPT: OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions.

AMEND: Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.

Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Amy K. Klare, Administrator, Civil Rights Division

October 15, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005



Secretary of State  
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries – Civil Rights Division  
Agency and Division

839  
Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.

  
Signature

Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date

## Veterans' Affairs Virtual Advisory Committee

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Advisory Committee to the Director of Veterans' Affairs  
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Beaverton, OR 97006

Irv Fletcher, Vice-Chair  
Advisory Committee to the Director of Veterans' Affairs  
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Paula Brown, Deputy Director  
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Salem, OR 97301-1285

**Disability Rights Virtual Advisory  
Committee**

Max Brown, Ph.D  
Legislation and Policy Analyst  
Seniors and People with Disabilities  
Oregon Department of Human Services  
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Salem, OR 97301  
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Salem, OR 97301-3967

Oregon Commission for the Blind  
Linda Mock, Administrator  
535 SE 12th Ave.  
Portland, Oregon 97214-2488

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Sen. Floyd Prozanski  
PO Box 11511  
Eugene, OR 97440

Senate Judiciary Committee Counsel  
Anna Braun  
900 Court Street NE, Room 354  
Salem, OR 97301

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Rep. Jeff Barker  
900 Court St. NE, H-476  
Salem, OR 97301

House Judiciary Committee Counsel  
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Rep. Carolyn Tomei  
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Milwaukie, OR 97269

House Human Services Committee  
Administrator  
Sandy Thiele-Cirka  
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900 Court St. NE, S-316  
Salem, OR 97301

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900 Court St. NE, H-278  
Salem, OR 97301

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Portland, OR 97229

Sen. Bill Morrisette  
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Salem, OR 97301

Rep. Dave Hunt  
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Salem, OR 97301

Rep. Vicki Berger  
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Rep. Deborah Boone  
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Sen. Jeff Kruse  
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Sen. Laurie Monnes Anderson  
900 Court St. NE, S-413  
Salem, OR 97301

Sen. Bruce Starr  
22115 NW Imbrie Dr. #290  
Hillsboro, OR 97124

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller (971) 873-0784  
Rules Coordinator Telephone  
800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0050, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15



Bureau of Labor and Industries

# Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0206

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**CORRECTED** Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**

FEB 24 2010

ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller,

800 NE Oregon St. Suite 1045, Portland, OR 97232-2180

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments and amendments regarding disability, veterans' preference and discrimination based on uniformed service.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-006-0307; 839-006-0480; 839-006-0202; 839-005-0206

**AMEND:** 839-005-0000; 839-005-0003; 839-005-0005; 839-005-0010; 839-005-0021; 839-005-0195; 839-005-0200; 839-005-0205; 839-005-0215; 839-005-0220; 839-006-0200; 839-006-205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0330; 839-006-0335; 839-006-0435; 839-006-0440; 839-006-0445; 839-006-0450; 839-006-0455; 839-006-0460; 839-006-0465; 839-006-0470

Stat. Auth.: ORS 659A.805

Other Auth.: HB 3256, HB 2510 and SB 874, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2510 (removing restrictions on civil service Veterans' Preference); HB 3256 (making discrimination on the basis of uniformed service an unlawful employment practice); SB 874 (conforming Oregon disability discrimination law to federal Americans with Disabilities Act Amendments Act of 2008).

**RULE SUMMARY**

The proposed rules and amendments would implement amendments to statutes providing for employment preference for veterans. (HB 2510).

The proposed rules and amendments would implement amendments to disability discrimination statutes to conform them to the federal Americans with Disabilities Act Amendments Act of 2008. (SB 874).

The proposed rules would implement newly enacted statutes prohibiting discrimination in employment on the basis of uniformed service. (HB 3256).



Brad Avakian

2/23/10

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

NPRM & Fiscal Impact Missing

BLI-8-2010

2-24-10

## **Veterans' Affairs Virtual Advisory Committee**

Tino E. Ornelas, Chair  
Advisory Committee to the Director of Veterans' Affairs  
228 SW Meadow Dr.  
Beaverton, OR 97006

Irv Fletcher, Vice-Chair  
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Salem, OR 97301-1285

**Disability Rights Virtual Advisory  
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Salem, OR 97301

Sen. David Nelson  
900 Court St. NE, S-211  
Salem, OR 97301

Sen. Jeff Kruse  
636 Wild Iris Ln.  
Roseburg, OR 97470

Sen. Laurie Monnes Anderson  
900 Court St. NE, S-413  
Salem, OR 97301

Sen. Bruce Starr  
22115 NW Imbrie Dr. #290  
Hillsboro, OR 97124

Amendment Missing

BL18-2010 f. & cat. of 2-24-10

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marla Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0080, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.138, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to Interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.ohlemiller@state.or.us  
Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>	<b>839</b>
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller Rules Coordinator	971-673-0784 Telephone
800 NE Oregon St, Ste. 1045 Portland, OR 97232	Address

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

**Other Auth.:**

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>839</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	<u>(971) 673-0784</u>
Address	

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0170

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

BLI 3-2012, f. & cert. ef. 2-8-12

BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller,

800 NE Oregon St. Suite 1045, Portland, OR 97232-2180

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** OAR 839-006-0332; 839-005-0138; 839-005-0140; 839-005-0160; 839-005-0170;

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, and SB 786, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave).

**RULE SUMMARY**

The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

  
Authorized Signer

Brad Avakian

Printed name

2/24/10  
Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division	839	
Agency and Division	Administrative Rules Chapter Number	
Marcia Ohlemiller	800 NE Oregon St. #1045, Portland, OR 97232	971-673-0784
Rules Coordinator	Address	Telephone

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions.  
**AMEND:** Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.

Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Amy K. Klare, Administrator, Civil Rights Division

October 15, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries – Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.

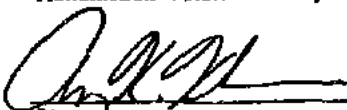
**c. Equipment, supplies, labor and increased administration required for compliance:**

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.



Signature

Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date

**Veterans' Affairs Virtual Advisory Committee**

Tino E. Ornelas, Chair  
Advisory Committee to the Director of Veterans' Affairs  
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Irv Fletcher, Vice-Chair  
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**Disability Rights Virtual Advisory  
Committee**

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Rep. Tobias Read

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Rep: Arnie Roblan  
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Sen. David Nelson  
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Salem, OR 97301

Sen. Jeff Kruse  
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Roseburg, OR 97470

Sen. Laurie Monnes Anderson  
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Sen. Bruce Starr  
22115 NW Imbrie Dr. #290  
Hillsboro, OR 97124

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on December 30, 2011 by the

Bureau of Labor and Industries  
Agency and Division

Date prior to or same as filing date  
839

Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232  
Rules Coordinator Address

971-673-0784  
Telephone

to become effective January 1, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-005-0075, 839-005-0125, 839-005-0130, 839-005-0135, 839-005-0175, 839-009-0364

**AMEND:** 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

**RENUMBER:** 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

Stats. Implemented: HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.



Brad Avakian

December 30, 2011

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

**CORRECTED**  
Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

<u>Bureau of Labor and Industries</u>	839
Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	(971) 673-0784
Rules Coordinator	Telephone
<u>Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 **839-005-0075**

**AMEND:**

839-005-0039; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-005-0212; 839-005-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-005-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding, & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>Last Day (m/d/yyyy) and Time for public comment</u>	<u>Printed Name</u>	<u>Email Address</u>	<u>Date Filed</u>
12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10p.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Conforming civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Statutory Authority:

ORS 659A.805

Other Authority:

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

Stats. Implemented:

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

Need for the Rule(s):

The proposed rules and amendments would implement newly-enacted statutes clarifying and expanding civil rights in employment relating to jurors, crime victims, disability, credit history and attending criminal proceedings.

Documents Relied Upon, and where they are available:

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; and clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave and discrimination provisions), available on Oregon Legislature website; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885, available in ORS publications.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The newly enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2012 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public and private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

State agencies and units of local government will be subject to rules implementing HB 2036, HB 2828 and HB 3482. Fiscal or economic impact would result from those laws, and not the proposed rulemaking. A positive impact is anticipated for the public, expanding protections for employees who are serving on juries and who are victims of criminal harassment.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated because the proposed changes implement provisions of existing law. Existing crime victims rules call for some additional recordkeeping, but the newly enacted laws are not anticipated to substantially increase this.



c. Equipment, supplies, labor and increased administration required for compliance:  
No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?  
If not, why?:

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No

The proposed rule amendments and adoptions would implement statutory specifications over which BOLI has no discretion.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>	<u>11-10-11 1:10 PM</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

RECEIVED

FEB 22 2012

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

CIVIL RIGHTS DIVISION  
PORTLAND OFFICE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 7, 2012 by the

Bureau of Labor and Industries

Date prior to or same as filing date  
839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller  
Rules Coordinator

800 NE Oregon St. Suite 1045, Portland, OR 97232  
Address

971-673-0784  
Telephone

to become effective February 8, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-005-0075, 839-005-0130, 839-005-0135, ~~839-009-0364~~

*MMY FEB. 20*

**AMEND:** 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

**RENUMBER:** 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.



Stats. Implemented: HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

Brad Avakian  
Printed name

February 7, 2012  
Date

Authorized Signer

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

**CORRECTED**

Secretary of State

**NOTICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 **839-005-0075**

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0280; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)), and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.LOhlemiller@state.or.us</u>	<u>11-10-11 1:10p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday. ARC 923-2003

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0285; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>	<u>11-10-11 1:10p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marla Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.32D, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>		839
<b>Agency and Division</b>		<b>Administrative Rules Chapter Number</b>
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232	971-673-0784
<b>Rules Coordinator</b>	<b>Address</b>	<b>Telephone</b>

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
ADOPT: 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

AMEND: 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>  
H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):  
No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:  
No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?  
Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15

Bureau of Labor and Industries

Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0065

Date Rule Became Effective: July 1, 2010

Date Review Due: July 1, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



**Advisory Committee**

JK Wilson [jlwilson@aoi.com](mailto:jlwilson@aoi.com)

Jim Craven [jim\\_craven@aeanet.org](mailto:jim_craven@aeanet.org)

Paul Cosgrove [pcosgrove@lindsayhart.com](mailto:pcosgrove@lindsayhart.com)

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Angela Martin [angela@ouorogon.org](mailto:angela@ouorogon.org)

Shepard [duke@oraglcio.org](mailto:duke@oraglcio.org)

Hoffman [margi@theresiddercompany.com](mailto:margi@theresiddercompany.com)

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Department of Labor and Industries, Civil Rights Division 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232-2180 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Mon., May 3<sup>rd</sup>, 3:30 pm to 5:30 pm Portland State Office Building, 800 NE Oregon St. Portland, OR Rm 1-B Stefanie Plebanek  
Hearing Date Time Location Hearings Officer  
*Hearing site is accessible to individuals with disabilities. Auxiliary aids for individuals with disabilities are available upon request to Rules Coordinator at 971-673-0784 no later than 10 days prior to hearing date.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
**ADOPT:** Division 5 rule numbers as needed.

**AMEND:** Division 5 rule numbers as needed.

**RENUMBER:** Division 5 rule numbers as needed.

**AMEND & RENUMBER:** Division 5 rule numbers as needed.

Stat. Auth. : ORS 659A.805

Leg. Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

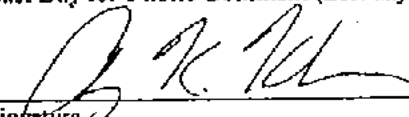
**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and employers for whom employees' credit history is substantially job-related.

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

May 3, 2010 at 5:30 pm

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

  
Signature Printed name Date  
Any K. Klare March 12, 2010

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless the deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division  
Agency and Division

839

Administrative Rules Chapter Number

Implementing statutory enactments restricting use of employees' credit history for employment purposes.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rules regulating the use of credit history in employment.

Statutory Authority: ORS 659A.805

Other Authority: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

Need for the Rule(s): The rules are needed to implement the legislation.

Documents Relied Upon, and where they are available: SB 1045, available on the Oregon Legislature website.

Fiscal and Economic Impact: No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted laws that the proposed rules would implement will be in statutes on July 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for employers, because the proposed rule adoptions and amendments would implement and clarify laws already enacted, making it less likely that employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory adoptions and amendments the rules for the most part would implement will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers, and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

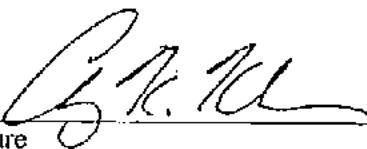
a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. The proposed rules would merely implement provisions of previously-enacted laws, not add additional requirements

c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule? Small business representatives are being asked to comment on drafts of proposed rules.

Administrative Rule Advisory Committee consulted?: Yes

  
Signature

Amy K. Klare

March 12, 2010

Printed name

Date

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 1, 2010 by the

<u>Bureau of Labor and Industries, Civil Rights Division</u>	<u>839</u>	
Agency and Division	Administrative Rules Chapter Number	
<u>Marcia L. Ohlemiller</u>	<u>800 NE Oregon Street, Suite 1045, Portland, Oregon 97232</u>	<u>971-673-0784</u>
Rules Coordinator	Address	Telephone

to become effective July 1, 2010. Rulemaking Notice was published in the April 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

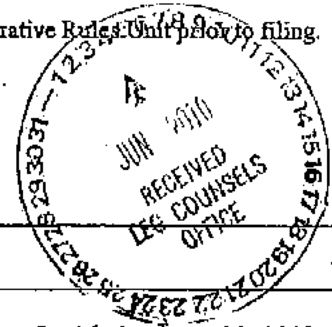
Implementing statutory enactments restricting use of employee's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085




Stat. Auth.: ORS 659A.805

Other Auth.: SB 1045, Oregon Legislative Assembly 2010

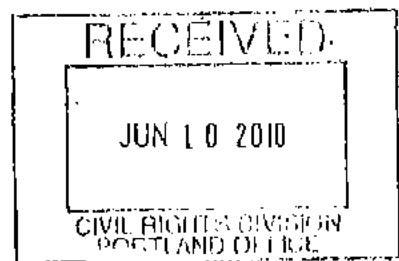
Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and positions for which an applicant's or employee's credit history is substantially job-related.

	<u>Brad Avakian</u>	<u>June 1, 2010</u>
Authorized Signer	Printed name	Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005



Employer Obtainment or Use of Credit History Information

839-005-0060

Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.

(2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of OL 2010, Ch. 102 may file a complaint under ORS 659A.820 or may bring a civil action under ORS 659A.885.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces Oregon Law 2010, Chapter 102 (OL 2010, Ch. 102). These rules implement and interpret OL 2010, Ch. 102.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

839-005-0065

Definitions

(1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.

(2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(6) "Substantially job-related" is defined in OAR 839-005-0080.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0070

Unlawful Discrimination

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) OL 2010, Ch. 102 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at OL 2010, Ch. 102(2). OL 2010(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(a) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0080

Substantially Job-Related

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;

(A) Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or

(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

839-005-0085

Enforcement & Retaliation

(1) An employer's duties and obligations under OL 2010, Ch. 102 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.

(2) An applicant or employee claiming a violation of OL 2010, Ch. 102 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) An applicant or employee claiming a violation of OL 2010, Ch. 102 may bring a civil action under ORS 659A.885.

(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OL 2010, Ch. 102.

(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OL 2010, Ch. 102, or to attempt to do so.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	Address
	Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

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Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

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Other Auth.:

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Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

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**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.



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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlenmiller*

Marcia Ohlenmiller

10/15/2013

Signature

Printed name

Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Signature

Marcia Ohlemiller

Printed name

October 15, 2013

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>839</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	<u>(971) 673-0784</u>

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0076, 839-005-0080, 839-005-0085, 839-005-0180, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2889, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 668A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to Interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limited consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; edoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0180, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.081

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address

NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0080

Date Rule Became Effective: July 1, 2010

Date Review Due: July 1, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

4) Is the rule still needed?

Yes.

5) What impacts has the rule had on small business?

No known impact.



Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Advisory Committee

JK Wilson [jlwilson@aoi.com](mailto:jlwilson@aoi.com)

Jim Craven [jim\\_craven@aeanet.org](mailto:jim_craven@aeanet.org)

Paul Cosgrove [pcosgrove@lindsayhart.com](mailto:pcosgrove@lindsayhart.com)

Bartholomew [jonb@ospirg.org](mailto:jonb@ospirg.org)

Angela Martin [angela@ouoregon.org](mailto:angela@ouoregon.org)

Shepard [duke@oraglcio.org](mailto:duke@oraglcio.org)

Hoffman [margi@theresiddercompany.com](mailto:margi@theresiddercompany.com)

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

ureau of Labor and Industries, Civil Rights Division 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232-2180 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Mon., May 3<sup>rd</sup>, 3:30 pm to 5:30 pm Portland State Office Building, 800 NE Oregon St. Portland, OR Rm 1-B Stefanie Plebanek  
Hearing Date Time Location Hearings Officer  
*Hearing site is accessible to individuals with disabilities. Auxillary aids for individuals with disabilities are available upon request to Rules Coordinator at 971-673-0784 no later than 10 days prior to hearing date.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
**ADOPT:** Division 5 rule numbers as needed.

**AMEND:** Division 5 rule numbers as needed.

**RENUMBER:** Division 5 rule numbers as needed.

**AMEND & RENUMBER:** Division 5 rule numbers as needed.

Stat. Auth. : ORS 659A.805

ier Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

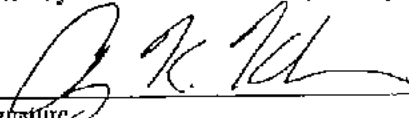
**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and employers for whom employees' credit history is substantially job-related.

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

May 3, 2010 at 5:30 pm

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

  
Signature Printed name Date  
Amy K. Klare March 12, 2010

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless a deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing statutory enactments restricting use of employees' credit history for employment purposes.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rules regulating the use of credit history in employment.

Statutory Authority: ORS 659A.805

Other Authority: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

Need for the Rule(s): The rules are needed to implement the legislation.

Documents Relied Upon, and where they are available: SB 1045, available on the Oregon Legislature website.

Fiscal and Economic Impact: No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted laws that the proposed rules would implement will be in statutes on July 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for employers, because the proposed rule adoptions and amendments would implement and clarify laws already enacted, making it less likely that employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory adoptions and amendments the rules for the most part would implement will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers, and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

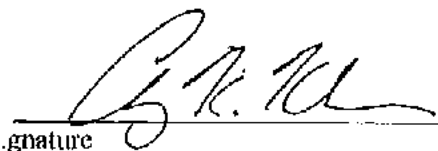
b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. The proposed rules would merely implement provisions of previously-enacted laws, not add additional requirements

c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule? Small business representatives are being asked to comment on drafts of proposed rules.

Administrative Rule Advisory Committee consulted?: Yes

Signature



Amy K. Klare

Printed name

March 12, 2010

Date

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 1, 2010 by the

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia L. Ohlemiller

800 NE Oregon Street, Suite 1045, Portland, Oregon 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective July 1, 2010. Rulemaking Notice was published in the April 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085


Stat. Auth.: ORS 659A.805

Other Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and positions for which an applicant's or employee's credit history is substantially job-related.



Brad Avakian

June 1, 2010

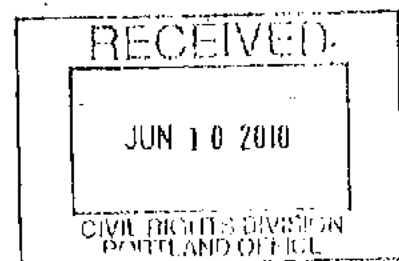
Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



## Employer Obtainment or Use of Credit History Information

839-005-0060

### Purpose and Scope

- (1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.
- (2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.
- (3) Any individual claiming to be aggrieved by an unlawful practice including a violation of OL 2010, Ch. 102 may file a complaint under ORS 659A.820 or may bring a civil action under ORS 659A.885.
- (4) The Civil Rights Division of the Bureau of Labor and Industries enforces Oregon Law 2010, Chapter 102 (OL 2010, Ch. 102). These rules implement and interpret OL 2010, Ch. 102.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0065

### Definitions

- (1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.
- (2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.
- (3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.
- (4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.
- (5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).
- (6) "Substantially job-related" is defined in OAR 839-005-0080.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0070

Unlawful Discrimination

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) OL 2010, Ch. 102 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at OL 2010, Ch. 102(2). OL 2010(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(a) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0080

Substantially Job-Related

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;

**(A) Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or**

**(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.**

**Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805**

**Stats. Implemented: OL 2010, Ch. 102**

**839-005-0085**

**Enforcement & Retaliation**

**(1) An employer's duties and obligations under OL 2010, Ch. 102 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.**

**(2) An applicant or employee claiming a violation of OL 2010, Ch. 102 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.**

**(3) An applicant or employee claiming a violation of OL 2010, Ch. 102 may bring a civil action under ORS 659A.885.**

**(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OL 2010, Ch. 102.**

**(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OL 2010, Ch. 102, or to attempt to do so.**

**Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805**

**Stats. Implemented: OL 2010, Ch. 102**



Amendment missing

BLI 8-2011 f. 10-13-11 out of 10-14-11

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Signature

Marcia Ohlemiller

Printed name

October 15, 2013

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohleniller*

Marcia Ohleniller

10/15/2013

Signature

Printed name

Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3283, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0080, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries.

Agency and Division: Marcia Ohlemiller Administrative Rules Chapter Number: 839  
Rules Coordinator: Marcia Ohlemiller Telephone: (971) 673-0784  
Address: 800 NE Oregon St., Ste. 1045, Portland, OR 97232

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address



NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0060

Date Rule Became Effective: July 1, 2010

Date Review Due: July 1, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Advisory Committee

JK Wilson [jlwilson@aol.com](mailto:jlwilson@aol.com)

Jim Craven [jim\\_craven@aeanet.org](mailto:jim_craven@aeanet.org)

Paul Cosgrove [pcosgrove@lindsayhart.com](mailto:pcosgrove@lindsayhart.com)

Bartholomew [jonb@ospirg.org](mailto:jonb@ospirg.org)

Angela Martin [angela@ouoregon.org](mailto:angela@ouoregon.org)

Shepard [duke@oraglcio.org](mailto:duke@oraglcio.org)

Hoffman [margi@theresiddercompany.com](mailto:margi@theresiddercompany.com)

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

ureau of Labor and Industries, Civil Rights Division 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232-2180 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Mon., May 3<sup>rd</sup>, 3:30 pm to 5:30 pm Portland State Office Building, 800 NE Oregon St. Portland, OR Rm 1-B Stefanie Plebanek  
Hearing Date Time Location Hearings Officer  
*Hearing site is accessible to individuals with disabilities. Auxiliary aids for individuals with disabilities are available upon request to Rules Coordinator at 971-673-0784 no later than 10 days prior to hearing date.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
ADOPT: Division 5 rule numbers as needed.

AMEND: Division 5 rule numbers as needed.

RENUMBER: Division 5 rule numbers as needed.

AMEND & RENUMBER: Division 5 rule numbers as needed.

Stat. Auth. : ORS 659A.805

er Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

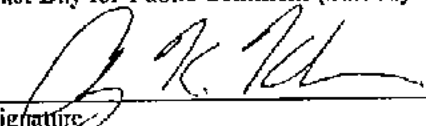
**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and employers for whom employees' credit history is substantially job-related.

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

May 3, 2010 at 5:30 pm

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

  
Signature Printed name Date  
Amy K. Klare March 12, 2010

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless a deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing statutory enactments restricting use of employees' credit history for employment purposes.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rules regulating the use of credit history in employment.

Statutory Authority: ORS 659A.805

Other Authority: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

Need for the Rule(s): The rules are needed to implement the legislation.

Documents Relied Upon, and where they are available: SB 1045, available on the Oregon Legislature website.

Fiscal and Economic Impact: No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted laws that the proposed rules would implement will be in statutes on July 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for employers, because the proposed rule adoptions and amendments would implement and clarify laws already enacted, making it less likely that employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory adoptions and amendments the rules for the most part would implement will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers, and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

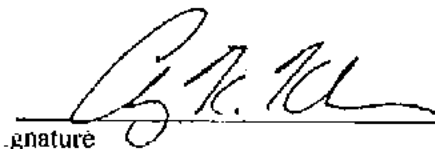
a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. The proposed rules would merely implement provisions of previously-enacted laws, not add additional requirements

c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule? Small business representatives are being asked to comment on drafts of proposed rules.

Administrative Rule Advisory Committee consulted?: Yes



Signature

Amy K. Klarc

Printed name

March 12, 2010

Date

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 1, 2010 by the

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia L. Ohlemiller

800 NE Oregon Street, Suite 1045, Portland, Oregon 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective July 1, 2010. Rulemaking Notice was published in the April 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

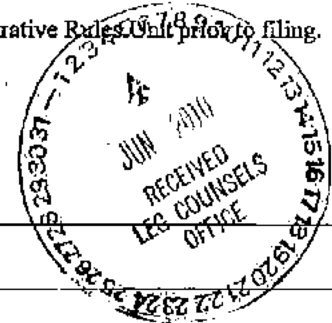
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085

Stat. Auth.: ORS 659A.805

Other Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010



**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and positions for which an applicant's or employee's credit history is substantially job-related.

Brad Avakian

June 1, 2010

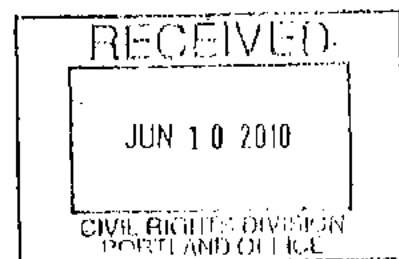
Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



## Employer Obtainment or Use of Credit History Information

839-005-0060

### Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.

(2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of OL 2010, Ch. 102 may file a complaint under ORS 659A.820 or may bring a civil action under ORS 659A.885.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces Oregon Law 2010, Chapter 102 (OL 2010, Ch. 102). These rules implement and interpret OL 2010, Ch. 102.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0065

### Definitions

(1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.

(2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(6) "Substantially job-related" is defined in OAR 839-005-0080.



Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0070

Unlawful Discrimination

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) OL 2010, Ch. 102 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at OL 2010, Ch. 102(2). OL 2010(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(a) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0080

Substantially Job-Related

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;

(A) Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or

(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

839-005-0085

Enforcement & Retaliation

(1) An employer's duties and obligations under OL 2010, Ch. 102 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.

(2) An applicant or employee claiming a violation of OL 2010, Ch. 102 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.

(3) An applicant or employee claiming a violation of OL 2010, Ch. 102 may bring a civil action under ORS 659A.885.

(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OL 2010, Ch. 102.

(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OL 2010, Ch. 102, or to attempt to do so.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. Ste. 1045 Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>  
H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(B)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?  
Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0200

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Law citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller (971) 673-0784  
Rules Coordinator Telephone  
800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 859.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0070

Date Rule Became Effective: July 1, 2010

Date Review Due: July 1, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

BLI 8-2011, f. 10-13-11, cert. cf. 10-14-11

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Advisory Committee

JK Wilson [jlwilson@aoi.com](mailto:jlwilson@aoi.com)

Jim Craven [jim\\_craven@aeanet.org](mailto:jim_craven@aeanet.org)

Paul Cosgrove [pcosgrove@lindsayhart.com](mailto:pcosgrove@lindsayhart.com)

Bartholomew [jonb@ospirg.org](mailto:jonb@ospirg.org)

Angela Martin [angela@ouoregon.org](mailto:angela@ouoregon.org)

Shepard [duke@oraglcio.org](mailto:duke@oraglcio.org)

Hoffman [margi@theresiddercompany.com](mailto:margi@theresiddercompany.com)

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form.

ureau of Labor and Industries, Civil Rights Division 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232-2180 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION**

Implementing statutory enactments restricting use of employee's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Mon., May 3<sup>rd</sup>, 3:30 pm to 5:30 pm Portland State Office Building, 800 NE Oregon St. Portland, OR Rm 1-B Stefanie Plebanek  
Hearing Date Time Location Hearings Officer  
*Hearing site is accessible to individuals with disabilities. Auxiliary aids for individuals with disabilities are available upon request to Rules Coordinator at 971-673-0784 no later than 10 days prior to hearing date.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
**ADOPT:** Division 5 rule numbers as needed.

**AMEND:** Division 5 rule numbers as needed.

**RENUMBER:** Division 5 rule numbers as needed.

**AMEND & RENUMBER:** Division 5 rule numbers as needed.

Stat. Auth. : ORS 659A.805

er Auth.: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

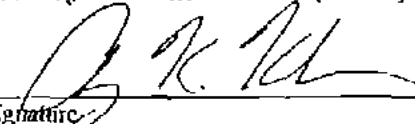
**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and employers for whom employees' credit history is substantially job-related.

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

May 3, 2010 at 5:30 pm

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)



Amy K. Klare  
Printed name

March 12, 2010  
Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing statutory enactments restricting use of employees' credit history for employment purposes.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Rules regulating the use of credit history in employment.

Statutory Authority: ORS 659A.805

Other Authority: SB 1045, Oregon Legislative Assembly 2010

Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

Need for the Rule(s): The rules are needed to implement the legislation.

Documents Relied Upon, and where they are available: SB 1045, available on the Oregon Legislature website.

Fiscal and Economic Impact: No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted laws that the proposed rules would implement will be in statutes on July 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for employers, because the proposed rule adoptions and amendments would implement and clarify laws already enacted, making it less likely that employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory adoptions and amendments the rules for the most part would implement will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers, and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

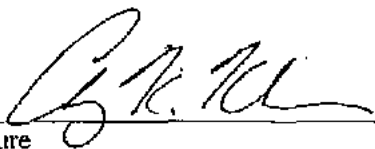
b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. The proposed rules would merely implement provisions of previously-enacted laws, not add additional requirements

c. Equipment, supplies, labor and increased administration required for compliance: No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule? Small business representatives are being asked to comment on drafts of proposed rules.

Administrative Rule Advisory Committee consulted?: Yes

Signature



Amy K. Klare

Printed name

March 12, 2010

Date

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on June 1, 2010 by the

Bureau of Labor and Industries, Civil Rights Division 839  
Agency and Division Administrative Rules Chapter Number

Marcia L. Ohlemiller 800 NE Oregon Street, Suite 1045, Portland, Oregon 97232 971-673-0784  
Rules Coordinator Address Telephone

to become effective July 1, 2010. Rulemaking Notice was published in the April 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

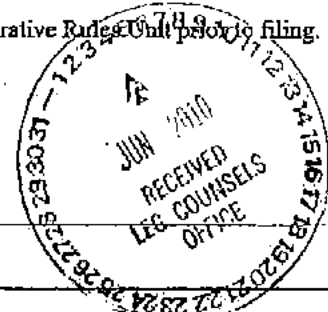
Implementing statutory enactments restricting use of employee's credit history for employment purposes.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085




Stat. Auth.: ORS 659A.805

Other Auth.: SB 1045, Oregon Legislative Assembly 2010

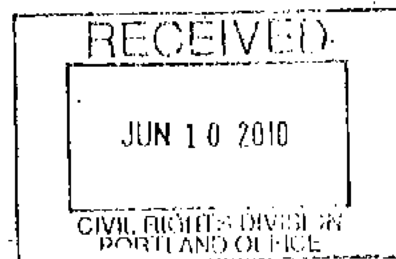
Stats. Implemented: SB 1045 (relating to use of credit history for employment purposes), Oregon Legislative Assembly 2010

**RULE SUMMARY**

The proposed rules would implement statutory enactments making discrimination on the basis of credit history an unlawful employment practice, except for employers that are federally insured banks or credit unions; state or federal employers required to use individual credit history for employment purposes; law enforcement units employing public safety officers; and positions for which an applicant's or employee's credit history is substantially job-related.

  
Authorized Signer Brad Avakian June 1, 2010  
Printed name Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005





Employer Obtainment or Use of Credit History Information

839-005-0060

Purpose and Scope

(1) It is the policy of the State of Oregon to guarantee individuals the fullest possible participation in the social and economic life of the state, including employment. Obtainment or use by an employer of information in an applicant's credit history impacts the individual's privacy, and must relate only to the position for which the individual is being considered or holds. The people of Oregon have the right to employment without unlawful discrimination on the basis of credit history.

(2) Prohibited discrimination is a basis of unlawful practices described in ORS chapter 659A and other chapters of the Oregon statutes.

(3) Any individual claiming to be aggrieved by an unlawful practice including a violation of OL 2010, Ch. 102 may file a complaint under ORS 659A.820 or may bring a civil action under ORS 659A.885.

(4) The Civil Rights Division of the Bureau of Labor and Industries enforces Oregon Law 2010, Chapter 102 (OL 2010, Ch. 102). These rules implement and interpret OL 2010, Ch. 102.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805

Stats. Implemented: OL 2010, Ch. 102

839-005-0065

Definitions

(1) "Applicant" means an individual who has submitted information for the purpose of gaining employment.

(2) "Credit history" means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing or credit capacity.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employer" means any person who in this state, directly or through an agent, engages or uses the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed.

(5) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(6) "Substantially job-related" is defined in OAR 839-005-0080.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0070

Unlawful Discrimination

(1) It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an applicant for employment or an employee, or to refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

(2) Obtainment or use of credit history information may not be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2, ORS 659A.030 and OAR 839-005-0010. A finding of adverse impact discrimination does not require establishment of intentional discrimination.

(3) OL 2010, Ch. 102 permits an employer to obtain or use for employment purposes information contained in the credit history of an applicant or employee under circumstances described at OL 2010, Ch. 102(2). OL 2010(2)(d) permits an employer to obtain or use information contained in the credit history of an applicant or employee if the credit history information is substantially job-related, and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

(a) The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805  
Stats. Implemented: OL 2010, Ch. 102

839-005-0080

Substantially Job-Related

(1) The determination of whether credit history information is substantially job-related must be evaluated with respect to the position for which the individual is being considered or holds.

(2) Credit history information of an applicant or employee is substantially job-related if:

(a) An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;

**(A) Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or**

**(b) The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.**

**Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805**

**Stats. Implemented: OL 2010, Ch. 102**

**839-005-0085**

**Enforcement & Retaliation**

**(1) An employer's duties and obligations under OL 2010, Ch. 102 extend to an employer that is a successor in interest as defined in OAR 839-005-0014.**

**(2) An applicant or employee claiming a violation of OL 2010, Ch. 102 or these rules may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659A.820.**

**(3) An applicant or employee claiming a violation of OL 2010, Ch. 102 may bring a civil action under ORS 659A.885.**

**(4) Pursuant to ORS 659A.030(1)(f), it is an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against any person because the person has filed a complaint, testified or assisted in any proceeding in connection with OL 2010, Ch. 102.**

**(5) Pursuant to ORS 659A.030(1)(g), it is an unlawful employment practice for any person, whether an employer or an employee, to aid, abet, incite, compel or coerce the doing of any of the acts in violation of OL 2010, Ch. 102, or to attempt to do so.**

**Stat. Auth.: OL 2010, Ch. 102(5), ORS 659A.805**

**Stats. Implemented: OL 2010, Ch. 102**

Amendment missing

BL/ P-2011 f. 10-13-11 ~~at~~ ef. 10-14-11

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Oklemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	Address
	Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohleniller*

Marcia Ohleniller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>  
H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):  
No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:  
No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohtemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1046, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0208

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.108, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to Interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

---

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

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12-30-13 3:47 PM  
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Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0028, 839-005-0030, 839-005-0031, 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0208, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0400

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.





# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180
Rules Coordinator	Address
	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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Authorized Signer	With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.			

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Advisory Committee [www.oregon.gov/boli](http://www.oregon.gov/boli)  
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# Oregon

Secretary of State  
**OFFICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

### Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

### Statement of Cost of Compliance:

#### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(B)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

#### 2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted? Yes

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Amy K. Clark, Administrator, Civil Rights

September 25, 2009

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, ARC 925-2007

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Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0265

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.

- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

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Certificate and Order for Filing

Bureau of Labor and Industries

Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller,  
Rules Coordinator

800 NE Oregon St. Suite 1045, Portland, OR 97232-2180  
Address

971-673-0784  
Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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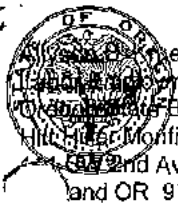
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# Oregon

Secretary of State

Bureau of Labor and Industries

## NOTICE OF PROPOSED RULEMAKING\*

Val Hoyle

A Statement of Need and Fiscal Impact accompanies this form.

Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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ARC 923-2005



# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

### Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

### Statement of Cost of Compliance:

#### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

#### 2. Cost of compliance effect on small business (ORS 183.336):

##### a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

##### b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employe leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

##### c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

### How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

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Amy K. Klacz Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

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## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0370

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.

- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

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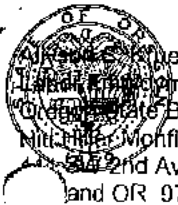
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With this original, file one photo copy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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# Oregon

Secretary of State  
**OFFICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

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The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm on the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.


c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

Signature:   
Portland, OR 97232-2180  
(971) 673-0761  
Fax: (971) 673-0762

SALEM  
3809 Wolverine St. NE; E-1  
Salem, OR 97305-1268  
(503) 328-2292  
Fax: (503) 328-2634

Amy K. Kline, Administrator, Civil Rights Division

EUGENE  
1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
Fax: (541) 686-7624

September 25, 2009

Signature

Printed name

Date

Administrative Rules Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, TDD 925-2007  
BEND  
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Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0430

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 5-2015, f. & cert. ef. 5-18-15

BLI 16-2013, f. & cert. ef. 12-31-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

*B. L. ...*  
 PORTLAND  
 800 NE Oregon St. Suite 1045  
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 (503) 373-7636

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 1400 Executive Parkway, Suite 200  
 Eugene, OR 97401-2158  
 (541) 686-7623  
 Fax (541) 686-7980

2/24/10  
Date

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

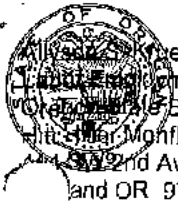
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# Oregon

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Military Assistance Panel  
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Salem OR 97301

Senate Commerce and Workforce  
Development Chair  
Sen. Diane Rosenbaum  
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Advisory Committee [www.oregon.gov/boli](http://www.oregon.gov/boli)  
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# Oregon

Secretary of State

Bureau of Labor and Industries

## NOTICE OF PROPOSED RULEMAKING\*

Val Hoyle

Commissioner

A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 1<sup>st</sup> day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm on the preceding Friday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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(541) 776-6201  
Fax (541) 776-6284



# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

### Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

### Statement of Cost of Compliance:

#### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

#### 2. Cost of compliance effect on small business (ORS 183.336):

##### a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

##### b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

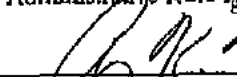
##### c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

Signature:   
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Amy K. Kellar, Administrator, Civil Rights Division

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September 25, 2009

Printed name

Date

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marla Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending rules in Division 839-009 to add new statutory provisions, add leave form, housekeeping edits

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0270, 839-009-0280, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0382, 839-009-0383, 839-009-0380, 839-009-0130

839-009-0345  
9/1/14

**REPEAL:**

839-009-0390  
9/1/14

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 659A.160-659A.186, 659A.043, 659A.046, H.B. 2950, 77th Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77th Leg., Reg. Session (Or. 2013), ORS 659A.090-659A.099, H.B. 3283, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 implement newly enacted legislation on OFLA.

Further amendments to 839-009-0210 are for housekeeping and to make the definition of health care provider consistent with the statutes.

Amendments to 839-009-0270 clarify that employer payment of health benefits is an employer option for OFLA-only leave.

Amendments to 839-009-0280 replace "available" paid leave with "accrued" paid leave for clarification.

Amendments to 839-009-0325, 839-009-0340, 839-009-0382, 839-009-0383 implement newly enacted legislation regarding public employers with respect to victims under this section.

Amendments to OAR 839-009-0325 and 839-009-0330 clarify what posting is required under newly enacted legislation. Currently 839-009-0325 and 839-009-0330 do not include a posting requirement for ORS 659A.170 to 659A.285. Newly amended legislation creates this requirement.

Amendments to 839-009-0340 reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of

Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-009-0340 and 839-009-0380 remove the word "calendar" in reference to year to be consistent with the statutes.

Amendments to 839-009-0430 include an example request form for OMFLA which a covered employee may provide.

Amendments to 839-009-0210, 839-009-0340, and 839-009-0380 adding a definition of spouse.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

**FILED**  
12-31-13 3:04 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

**Amending rules in Division 839-009 to add new statutory provisions, add a leave form, and make housekeeping edits**  
**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:** 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363, and 839-009-0430 and other Division 9 rules as necessary

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.090- 659A.099, H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 would implement newly enacted legislation on OFLA.

Further proposed amendments to 839-009-0210 would be for housekeeping and to make the definition of health care provider consistent with the statutes.

Proposed amendments to 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363 would implement newly enacted legislation regarding public employers with respect to victims under this section.

Proposed amendments to OAR 839-009-0325 would clarify what posting is required under newly enacted legislation. Currently 839-009-0325 does not include a posting requirement for ORS 659A.170 to 659A.285. Newly amended legislation creates this requirement.

Proposed amendments to 839-009-0340 would reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Proposed amendments to 839-009-0430 would include an example request form for OMFLA which a covered employee may provide.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending rules in Division 839-009 to add new statutory provisions, add a leave form, and make housekeeping edits

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending rules in Division 839-009

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.090- 659A.099, H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Further amendments provide a sample form for employers for OMFLA leave.

Documents Relied Upon, and where they are available:

H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2950/Enrolled>

H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2903/Enrolled>

H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB3263/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The amendments are to make the rules consistent with existing laws or newly enacted legislation. Further amendments provide an example of a form covered employers may use regarding OMFLA leave.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS.183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory specifications over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

**Authorization Page**  
Generated on May 15, 2015 11:11PM  
**PERMANENT ADMINISTRATIVE RULES**

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us
Rules Coordinator	Email Address
800 NE Oregon St., Ste. 1045, Portland, OR 97232	971-673-0784
Address	Telephone
Upon filing.	
Adopted on	
Upon filing.	
Effective date	

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0320, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0460

**REPEAL:** 839-009-0395

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.:** ORS 659A.805, 659A.093, 651.061, 654.062

**Other Auth.:**

**Stats. Implemented:** ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing 'calendar' references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

 Maria Ohleniller 5/15/15

Authorized Signer

Printed Name

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

BLI 5-2015-~~1~~ 5-18-15

NPRM & Final Impact Missing

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0450

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)



Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

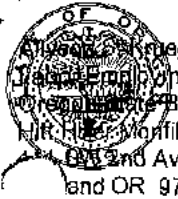
The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

	PORTLAND 800 NE Oregon St. Suite 1045 Portland, OR 97232-2180 (971) 671-0761 Fax (971) 673-0763	SALEM 3865 Wolvengard St. NE, R-1 Salem, OR 97303-7208 (503) 373-7636	EUGENE 1400 Executive Parkway, Suite 200 Eugene, OR 97401-2158 (541) 686-7623 Fax (541) 686-7980	2/24/10 Date
Authorized Signer	With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.			

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# Oregon

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Advisory Committee [www.oregon.gov/boli](http://www.oregon.gov/boli)





# Oregon

Secretary of State  
**OFFICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service-member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a PORTLAND or legal holiday, in which case the deadline is 5:00 pm on the preceding Friday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employe leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.


c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

Signature:   
Portland, OR 97232 2180  
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Fax: (971) 673-0762

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Amy K. State Administrator, Civil Rights Division

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September 25, 2009

Signature

Printed name

Date

Administrative Rules Unit, Civil Rights Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, AR 925-2007

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rules adopted on October 13, 2011 by the  
Bureau of Labor and Industries, Civil Rights Division 839

Agency and Division	Administrative Rules Chapter Number
Marcia L. Ohlemiller Rules Coordinator	800 NE Oregon St. #1045 Portland, OR 97232 971-673-0784 Address Telephone

to become effective October 14, 2011. Rulemaking Notice was published in the December 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

New and amended rule language to conform to and implement statutes and correct typographical errors.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

AMEND: 839-003-0005; 839-003-0025; 839-003-0100; 839-005-0010; 839-005-0026; 839-005-0031; 839-005-0070; 839-005-0080; 839-005-0200; 839-005-0206; 839-005-0220; 839-006-0240; 839-006-0275; 839-006-0307; 839-006-0455; 839-009-0210; 839-009-0250; 839-009-0280; 839-009-0340; 839-009-0365; 839-009-0400; 839-009-0450.

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885

**RULE SUMMARY**

The proposed rules and amendments would clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; and clarify how a discrimination complaint is verified.

Authorized Signer

Brad Avakian

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division  
Agency and Division

839  
Administrative Rules Chapter Number

Marcia Ohlemiller  
Rules Coordinator

800 NE Oregon St. #1045 Portland OR 97232  
Address

971-673-0784  
Telephone

**RULE CAPTION**

New and amended rule language to conform to and implement statutes and correct typographical errors.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

**AMEND:** OAR 839-003-0100 and other Division 3 rules as necessary; OAR 839-005-0080, OAR 839-005-0206, OAR 839-005-0210, OAR 839-005-0220, and other Division 5 rules as necessary; OAR 839-006-0200 and other Division 6 rules as necessary; OAR 839-009-0250, OAR 839-009-0260, OAR 839-009-0280, OAR 839-009-0290 and other Division 9 rules as necessary; OAR 839-010-0100 and other Division 10 rules as necessary.

**RENUMBER:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

**AMEND & RENUMBER:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.199; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885; other sections of ORS chapter 659A as appropriate.

**RULE SUMMARY**

The proposed rules and amendments would clarify the individuals protected by prohibitions against use of credit history in employment; clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform implementation of statutes prohibiting discrimination based on military service with federal law and make such statutes internally consistent; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that statutes require costs of completing OFLA verification forms to be paid by the employer; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify application of leave year for employees using pregnancy disability leave and parental leave; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; clarify how a discrimination complaint is verified; clarify that reports of violations of law to administrative agencies are protected under ORS 659A.199; implement statutes applying to use of physical force regarding health care employees.

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

January 3, 2011

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature

Marcia L. Ohlemiller

November 15, 2010

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

New and amended rule language to conform to and implement statutes and correct typographical errors.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Civil Rights Division Rulemaking November 2010

Statutory Authority: ORS 659A.805

Other Authority: N/A

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.199; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885; other sections of ORS chapter 659A as appropriate.

**Need for the Rule(s):**

The proposed rules and amendments would clarify the individuals protected by prohibitions against use of credit history in employment; clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform implementation of statutes prohibiting discrimination based on military service with federal law and make such statutes internally consistent; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that statutes require costs of completing OFLA verification forms to be paid by the employer; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify application of leave year for employees using pregnancy disability leave and parental leave; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; clarify how a discrimination complaint is verified; clarify that reports of violations of law to administrative agencies are protected under ORS 659A.199; implement statutes applying to use of physical force regarding health care employees.

Documents Relied Upon, and where they are available: N/A

**Fiscal and Economic Impact:**

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No fiscal impact is anticipated.
2. Cost of compliance effect on small business (ORS 183.336):
  - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: 107,103 small businesses will be subject to these rules.
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None.
  - c. Equipment, supplies, labor and increased administration required for compliance: None.

How were small businesses involved in the development of this rule? Small businesses are represented on our agency mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: Proposed rules and amendments are not substantive changes.

  
Signature

Marcia L. Ohlemiller November 15, 2010

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007



## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0460

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2015, f. & cert. ef. 6-24-15

BLI 5-2015, f. & cert. ef. 5-18-15

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

 Authorized Signer	PORTLAND 800 NE Oregon St. Suite 1045 Portland, OR 97232-2180 (971) 673 0761	SALEM 3665 Wolcott Blvd. S.E. Salem, OR 97305-1268 (503) 323-7336	EUGENE 1400 Executive Parkway, Suite 200 Eugene, OR 97401-2158 (541) 686-7623 Fax (541) 686-7980	2/24/10 Date
	With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.			

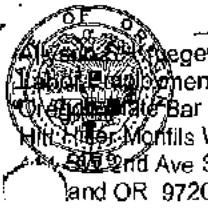
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# Oregon

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Advisory Committee

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# Oregon

Secretary of State  
**OFFICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm on the preceding workday. A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

**Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.**  
**Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)**

In the Matter of: **Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.**

Statutory Authority: **ORS 659A.805**

Other Authority: **HB 2744 and SB 928, Oregon Legislative Assembly, 2009**

**Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)**

**Need for the Rule(s):** The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

**Documents Relied Upon, and where they are available:** HB 2744, SB 928, 2009; available on the Oregon Legislature website.

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:**

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

**c. Equipment, supplies, labor and increased administration required for compliance:**

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

**How were small businesses involved in the development of this rule?**

Small business representatives are being asked to serve on the Rule Advisory Committee.

**Administrative Rule Advisory Committee consulted?:** Yes

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Fax (541) 486-7023

Amy K. Clark, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

Administrative Rules Unit, Bureau of Labor and Industries, Secretary of State, 800 Summer Street NE, Salem, Oregon 97304-1400 925-2007

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**PERMANENT ADMINISTRATIVE RULES**

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us
Rules Coordinator	Email Address
800 NE Oregon St., Ste. 1045, Portland, OR 97232	971-673-0784
Address	Telephone
Upon filing.	
Adopted on	
Upon filing.	
Effective date	

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0320, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0460

**REPEAL:** 839-009-0335

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805, 659A.093, 651.061, 654.062

**Other Auth.:**

Stats. Implemented: ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing 'calendar' references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

 Maria Ohleniller 5/15/15  
Authorized Signer Printed Name Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.



BLI 5-2015-1 5-18-15

NDRM & Fibel Impact Missing

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
6-24-15 10:00 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller (971) 673-0784  
Rules Coordinator Telephone  
800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0460

**REPEAL:**

839-009-0335

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.001, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

This permanent rule filing supersedes a permanent rule filing on 5/18/15 amending the same rules. The 5/18/15 filing had technical errors, invalidating the filing.

This permanent rule filing consists of amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of child, employee discipline for failure to give notice of OFLA leave, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

This permanent rule filing reinstates the temporary rule <sup>6545</sup> that ~~was~~ in effect from 11/20/14 to 5/15/15, which: ~~1) clarify that sick child leave applies only to children under the age of 18 or an adult dependent child limited by a physical or mental impairment; and 2) redefine "spouse" to include individuals in marriages recognized by any state's law or by a foreign jurisdiction, individuals in common law marriages and those in domestic partnerships or similar relationships recognized by any state.~~

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

NPRM of Fiscal Impact missing

BL 18-2015 6-24-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0420

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2015, f. & cert. ef. 6-24-15

BLI 5-2015, f. & cert. ef. 5-18-15

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

## PERMANENT ADMINISTRATIVE RULES

Bureau of Labor and Industries

Val Hoyle  
Commissioner

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

Authorized Signer

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

*B. L. ...*  
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800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761

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2/24/10  
Date

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# Oregon

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Advisory Committee

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# Oregon

Secretary of State

Bureau of Labor and Industries

## NOTICE OF PROPOSED RULEMAKING\*

Val Hoyle

Commissioner

A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klarc, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm on the preceding Sunday. A public rulemaking hearing may be requested in writing by 10 or more people or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

### Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

### Statement of Cost of Compliance:

#### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

#### 2. Cost of compliance effect on small business (ORS 183.336):

##### a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

##### b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

##### c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

### How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

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800 NE Oregon St. Suite 1045  
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EUGENE  
1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 486-7623  
Fax: (541) 486-7623

Amy K. Kiser, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

Administrative Rules Unit, Civil Rights Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, WRC 925-2007

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**PERMANENT ADMINISTRATIVE RULES**

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us
Rules Coordinator	Email Address
800 NE Oregon St., Ste. 1045, Portland, OR 97232	971-573-0784
Address	Telephone
Upon filing.	
Adopted on	
Upon filing.	
Effective date	

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0320, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0460

**REPEAL:** 839-009-0335

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805, 659A.093, 651.061, 654.062

**Other Auth.:**

Stats. Implemented: ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing 'calendar' references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

 Maria Ohlen Maria Ohlen 5/15/15

Authorized Signer

Printed Name

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

BLI 5-2015-1 5-18-15

NDRM & Field Impact Missing

Secretary of State  
Certificate and Order for Filing  
PERMANENT ADMINISTRATIVE RULES

FILED  
6-24-16 10:00 PM  
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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller (971) 873-0784  
Rules Coordinator Telephone  
000 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

RULE CAPTION

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 16 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0460.

REPEAL:

839-009-0336

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 659A.805, 659A.093, 651.081, 654.082

Other Authority:

Statutes Implemented:

ORS chapter 659A, 192.440(3), 192.501(B), 654.002, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

RULE SUMMARY

This permanent rule filing supersedes a permanent rule filing on 5/18/15 amending the same rules. The 5/18/15 filing had technical errors, invalidating the filing.

This permanent rule filing consists of amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of child, employee discipline for failure to give notice of OFLA leave, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

This permanent rule filing reinstates the temporary rule <sup>was</sup> that ~~were~~ in effect from 11/20/14 to 5/15/15, which: 1) clarify that sick child leave applies only to children under the age of 18 or an adult dependent child limited by a physical or mental impairment and 2) redefine "spouse" to include individuals in marriages recognized by any state's law or by a foreign jurisdiction, individuals in common law marriages and those in domestic partnerships or similar relationships recognized by any state.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L. Ohlemiller@state.or.us  
Email Address

NPRM of Fiscal Impact missing

BL18-2015 6-24-15



Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0400

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing  
PERMANENT ADMINISTRATIVE RULES

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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Authorized Signer		Printed Name		Date

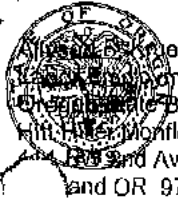
With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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Civil Rights Section  
Oregon State Bar  
Miller Williams LLP  
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# Oregon

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Advisory Committee

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# Oregon

Secretary of State  
**OFFICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more persons or by an association with 10 or more members, within 21 days following the publication of the rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

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Amy K. Clark, Administrator, Civil Rights Division

EUGENE  
1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
Fax (541) 686-7560

September 25, 2009

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, ORC 925-2007

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rules adopted on October 13, 2011 by the Bureau of Labor and Industries, Civil Rights Division

Agency and Division	Administrative Rules Chapter Number
Marcia L. Ohlemiller Rules Coordinator	839
800 NE Oregon St. #1045 Portland, OR 97232	971-673-0784
Address	Telephone

to become effective October 14, 2011. Rulemaking Notice was published in the December 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

New and amended rule language to conform to and implement statutes and correct typographical errors.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

AMEND: 839-003-0005; 839-003-0025; 839-003-0100; 839-005-0010; 839-005-0026; 839-005-0031; 839-005-0070; 839-005-0080; 839-005-0200; 839-005-0206; 839-005-0220; 839-006-0240; 839-006-0275; 839-006-0307; 839-006-0455; 839-009-0210; 839-009-0250; 839-009-0280; 839-009-0340; 839-009-0365; 839-009-0400; 839-009-0450.

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885

**RULE SUMMARY**

The proposed rules and amendments would clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; and clarify how a discrimination complaint is verified.

*Dorcas McKean, Deputy Comm.*  
Authorized Signer

Brad Avakian  
Printed name

Oct. 13, 2011  
Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. #1045 Portland OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

New and amended rule language to conform to and implement statutes and correct typographical errors.  
**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

**AMEND:** OAR 839-003-0100 and other Division 3 rules as necessary; OAR 839-005-0080, OAR 839-005-0206, OAR 839-005-0210, OAR 839-005-0220, and other Division 5 rules as necessary; OAR 839-006-0200 and other Division 6 rules as necessary; OAR 839-009-0250, OAR 839-009-0260, OAR 839-009-0280, OAR 839-009-0290 and other Division 9 rules as necessary; OAR 839-010-0100 and other Division 10 rules as necessary.

**RENUMBER:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

**AMEND & RENUMBER:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.199; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885; other sections of ORS chapter 659A as appropriate.

**RULE SUMMARY**

The proposed rules and amendments would clarify the individuals protected by prohibitions against use of credit history in employment; clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform implementation of statutes prohibiting discrimination based on military service with federal law and make such statutes internally consistent; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that statutes require costs of completing OFLA verification forms to be paid by the employer; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify application of leave year for employees using pregnancy disability leave and parental leave; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; clarify how a discrimination complaint is verified; clarify that reports of violations of law to administrative agencies are protected under ORS 659A.199; implement statutes applying to use of physical force regarding health care employees.

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

January 3, 2011

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature

Marcia L. Ohlemiller

November 15, 2010

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

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Secretary of State

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

New and amended rule language to conform to and implement statutes and correct typographical errors.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Civil Rights Division Rulemaking November 2010

Statutory Authority: ORS 659A.805

Other Authority: N/A

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.199; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885; other sections of ORS chapter 659A as appropriate.

**Need for the Rule(s):**

The proposed rules and amendments would clarify the individuals protected by prohibitions against use of credit history in employment; clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform implementation of statutes prohibiting discrimination based on military service with federal law and make such statutes internally consistent; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that statutes require costs of completing OFLA verification forms to be paid by the employer; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify application of leave year for employees using pregnancy disability leave and parental leave; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; clarify how a discrimination complaint is verified; clarify that reports of violations of law to administrative agencies are protected under ORS 659A.199; implement statutes applying to use of physical force regarding health care employees.

Documents Relied Upon, and where they are available: N/A

**Fiscal and Economic Impact:**

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No fiscal impact is anticipated.
2. Cost of compliance effect on small business (ORS 183.336):
  - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: 107,103 small businesses will be subject to these rules.
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None.
  - c. Equipment, supplies, labor and increased administration required for compliance: None.

How were small businesses involved in the development of this rule? Small businesses are represented on our agency mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: Proposed rules and amendments are not substantive changes.

Signature

Marcia L. Ohlemiller November 15, 2010

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0410

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2015, f. & cert. ef. 6-24-15

BLI 5-2015, f. & cert. ef. 5-18-15

BLI 12-2012, f. & cert. ef. 11-21-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

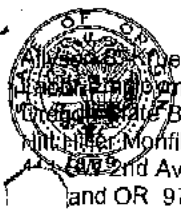
	PORTLAND 800 NE Oregon St. Suite 1045 Portland, OR 97232-2180 (971) 673-0761	SALEM 3865 Wolcott St. NE, Fl Salem, OR 97305-1288 (503) 373-7631	EUGENE 1400 Executive Parkway, Suite 200 Eugene, OR 97401-2158 (541) 686-7623 Fax (541) 686-7980	2/24/10
Authorized Signer		Printed name		Date

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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(541) 322-2435

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# Oregon

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Civil Rights Section  
Oregon State Bar  
DOJ Trial Torts & Emp  
1162 Court Street NE  
Salem, OR 97301

Bureau of Labor and Industries  
Civil Rights Section Val Hoyle  
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Advisory Committee

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# Oregon

Secretary of State  
**OFFICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, in which case the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people or by an association with 100 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

### Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

### Statement of Cost of Compliance:

#### 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

#### 2. Cost of compliance effect on small business (ORS 183.336):

##### a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

##### b. Projected reporting, recordkeeping and other administrative activities required for compliance including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

##### c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

### How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

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Fax: (541) 686-7623

Amy K. Clark, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

Administrative Rules, Inquiries, Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, TDD: 925-2007

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2012 Oregon Bulletin.

**RULE CAPTION**

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0335, 839-009-0390, ~~839-009-0410~~

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

ORS 659A.093(6)

**Statutes Implemented:**

ORS 659A.270 - 659A.285, ORS 659A.090 - 659A.099

**RULE SUMMARY**

The amendment to OAR 839-009-0335 will add harassment to the title of OAR 839-009-0335 to conform to ORS 659A.270 to ORS 659A.285.

The amendments to OAR 839-009-0390 and 839-007-0410 will clarify that an eligible employee need not be eligible to take protected leave under the Oregon Family Leave Act in order to qualify for protected leave under the Oregon Military Family Leave Act and conform with ORS 659A.090(1) and ORS 659A.093.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

11-21-12 10:17a.m.

Rules Coordinator Name

Email Address

Date Filed



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232	971-673-0784
Rules Coordinator	Address	Telephone

**RULE CAPTION**

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:**  
839-009-0335, 839-009-0390, 839-009-0410

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 659A.093(6)

Stats. Implemented: ORS 659A.270 - 659A.285, ORS 659A.090 - 659A.099

**RULE SUMMARY**

The amendment to OAR 839-009-0335 will add harassment to the title of OAR 839-009-0335 to conform to ORS 659A.270 to ORS 659A.285.

The amendments to OAR 839-009-0390 and 839-007-0410 will clarify that an eligible employee need not be eligible to take protected leave under the Oregon Family Leave Act in order to qualify for protected leave under the Oregon Military Family Leave Act and conform with ORS 659A.090(1) and ORS 659A.093.

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

November 9, 2012 5:00 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Marcia.Lohlemiller@state.or.us	Marcia Ohlemiller	9/14/12
Email address	Printed name	Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Statutory Authority: ORS 659A.805

Other Authority: ORS 659A.093(6)

Stats. Implemented: ORS 659A.270 - 659A.285, ORS 659A.090 - 659A.099

Need for the Rule(s):

Currently, OAR 839-009-0335 does not include harassment in the full title of the rule. This omission has caused confusion as to whether leave for harassment is protected under ORS 659A.270 to ORS 659A.285. The amendment would add harassment to the title of the rule to conform with ORS 659A.270 to ORS 659A.285.

Currently, OAR 839-009-0390 and 839-007-0410 are ambiguous on whether an employee eligible for protected leave under ORS 659A.090 to ORS 659A.099, the Oregon Military Family Leave Act ("OMFLA") needs to be also eligible for protected leave under ORS 659A.150 to ORS 659A.186, the Oregon Family Medical Leave Act (OFLA). The amendment would clarify that an eligible employee may qualify for protected leave under OMFLA without qualifying for protected leave under OFLA and conform with ORS 659A.090(1) and ORS 659A.093.

Documents Relied Upon, and where they are available:

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The newly amended laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

- 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

State agencies and units of local government will be subject to rules implementing ORS chapter 659A. No fiscal or economic impact is anticipated from the proposed rule amendments.

- 2. Cost of compliance effect on small business (ORS 183.336):

- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments.

- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated because the proposed changes implement provisions of existing law.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?:

No

If not, why?:

The proposed rule amendments and adoptions would implement statutory specifications over which BOLI has no discretion.

November 9, 2012 5:00 p.m.	Marcia Ohlemiller	Marcia.ohlemiller@state.or.us	9/14/12
Last Day and Time for Public Comment	Printed name	Email Address	Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

**Authorization Page**  
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**PERMANENT ADMINISTRATIVE RULES**

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us
Rules Coordinator	Email Address
800 NE Oregon St., Ste. 1045, Portland, OR 97232	971-673-0784
Address	Telephone
Upon filing.	
Adopted on	
Upon filing.	
Effective date	

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0320, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0460

**REPEAL:** 839-009-0335

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805, 659A.093, 651.061, 654.062

**Other Auth.:**

Stats. Implemented: ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing 'calendar' references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law,

 Maria Ohleniller 5/15/15

Authorized Signer

Printed Name

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

BLI 5-2015-1 5-18-15

NDRM & Fibal Impact Missing

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Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
6-24-15 10:00 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries  
Agency and Division 639  
Marcia Ohlemiller Administrative Rules Chapter Number  
Rules Coordinator (971) 673-0784  
Telephone  
800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0460

**REPEAL:**

839-009-0335

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.005, 659A.093, 651.001, 654.082

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.082, 345.010, 859.850, 408.230, 408.235, 653.060, 652.356

**RULE SUMMARY**

This permanent rule filing supersedes a permanent rule filing on 5/18/15 amending the same rules. The 5/18/15 filing had technical errors, invalidating the filing.

This permanent rule filing consists of amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of child, employee discipline for failure to give notice of OFLA leave, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

This permanent rule filing reinstates the temporary rule <sup>was</sup> that ~~was~~ in effect from 11/20/14 to 5/15/15, which: ~~1) clarify that sick child leave applies only to children under the age of 18 or an adult dependent child limited by a physical or mental impairment, and 2) redefine "spouse" to include individuals in marriages recognized by any state's law or by a foreign jurisdiction, individuals in common law marriages and those in domestic partnerships or similar relationships recognized by any state.~~

Marla Ohlemiller  
Rules Coordinator Name

Marla.L.Ohlemiller@state.or.us  
Email Address



NPRM of Fiscal Impact missing

BL18-2015 6-24-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0390

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 16-2013, f. & cert. ef. 12-31-13

BLI 12-2012, f. & cert. ef. 11-21-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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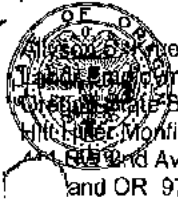
*2/24/10*  
 Date

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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# Oregon

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**Advisory Committee**

[www.oregon.gov/boli](http://www.oregon.gov/boli)

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## NOTICE OF PROPOSED RULEMAKING\*

A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlmer

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm on the following business day. A public rulemaking hearing may be requested by 10 or more people or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

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Amy K. State Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, TAC 925-2007

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

Certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller (971) 673-0784  
Rules Coordinator Telephone  
Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2012 Oregon Bulletin.

**RULE CAPTION**

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0335, 839-009-0390, 839-009-0410

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

ORS 659A.093(a)

**Statutes Implemented:**

ORS 659A.270 - 659A.285, ORS 659A.090 - 659A.099

**RULE SUMMARY**

The amendment to OAR 839-009-0335 will add harassment to the title of OAR 839-009-0335 to conform to ORS 659A.270 to ORS 659A.285.

The amendments to OAR 839-009-0390 and 839-007-0410 will clarify that an eligible employee need not be eligible to take protected leave under the Oregon Family Leave Act in order to qualify for protected leave under the Oregon Military Family Leave Act and conform with ORS 659A.090(1) and ORS 659A.093.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

11-21-12 10:17 a.m.  
Date Filed



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	Address
	Telephone

**RULE CAPTION**

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:**  
839-009-0335, 839-009-0390, 839-009-0410

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 659A.093(6)

Stats. Implemented: ORS 659A.270 - 659A.285, ORS 659A.090 - 659A.099

**RULE SUMMARY**

The amendment to OAR 839-009-0335 will add harassment to the title of OAR 839-009-0335 to conform to ORS 659A.270 to ORS 659A.285.

The amendments to OAR 839-009-0390 and 839-007-0410 will clarify that an eligible employee need not be eligible to take protected leave under the Oregon Family Leave Act in order to qualify for protected leave under the Oregon Military Family Leave Act and conform with ORS 659A.090(1) and ORS 659A.093.

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

November 9, 2012 5:00 p.m.

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

<u>Marcia.l.ohlemiller@state.or.us</u>	Marcia Ohlemiller	9/14/12
Email address	Printed name	Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment for Clarification of Eligibility of OMFLA and Clarification for Leave due to Harassment

Statutory Authority: ORS 659A.805

Other Authority: ORS 659A.093(6)

Stats. Implemented: ORS 659A.270 - 659A.285, ORS 659A.090 - 659A.099

Need for the Rule(s):

Currently, OAR 839-009-0335 does not include harassment in the full title of the rule. This omission has caused confusion as to whether leave for harassment is protected under ORS 659A.270 to ORS 659A.285. The amendment would add harassment to the title of the rule to conform with ORS 659A.270 to ORS 659A.285.

Currently, OAR 839-009-0390 and 839-007-0410 are ambiguous on whether an employee eligible for protected leave under ORS 659A.090 to ORS 659A.099, the Oregon Military Family Leave Act ("OMFLA") needs to be also eligible for protected leave under ORS 659A.150 to ORS 659A.186, the Oregon Family Medical Leave Act (OFLA). The amendment would clarify that an eligible employee may qualify for protected leave under OMFLA without qualifying for protected leave under OFLA and conform with ORS 659A.090(1) and ORS 659A.093.

Documents Relied Upon, and where they are available:

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The newly amended laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

State agencies and units of local government will be subject to rules implementing ORS chapter 659A. No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated because the proposed changes implement provisions of existing law.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?:

No

If not, why?:

The proposed rule amendments and adoptions would implement statutory specifications over which BOLI has no discretion.

November 9, 2012 5:00 p.m.	Marcia Ohlemiller	Marcia.l.ohlemiller@state.or.us	9/14/12
Last Day and Time for Public Comment	Printed name	Email Address	Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1046, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending rules in Division 839-009 to add new statutory provisions, add leave form, housekeeping edits

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0270, 839-009-0280, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0362, 839-009-0363, 839-009-0380, 839-009-0430

839-009-0345

8/14/14

**REPEAL:**

~~839-009-0370~~  
8/14/14

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**  
ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77th Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.286, H.B. 2903, 77th Leg., Reg. Session (Or. 2013), ORS 659A.090-659A.099, H.B. 3283, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 implement newly enacted legislation on OFLA.

Further amendments to 839-009-0210 are for housekeeping and to make the definition of health care provider consistent with the statutes.

Amendments to 839-009-0270 clarify that employer payment of health benefits is an employer option for OFLA-only leave.

Amendments to 839-009-0280 replace "available" paid leave with "accrued" paid leave for clarification.

Amendments to 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363 implement newly enacted legislation regarding public employers with respect to victims under this section.

Amendments to OAR 839-009-0325 and 839-009-0330 clarify what posting is required under newly enacted legislation. Currently 839-009-0325 and 839-009-0330 do not include a posting requirement for ORS 659A.170 to 659A.286. Newly amended legislation creates this requirement.

Amendments to 839-009-0340 reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of

Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-009-0340 and 839-009-0380 remove the word "calendar" in reference to year to be consistent with the statutes.

Amendments to 839-009-0430 include an example request form for QMFLA which a covered employee may provide.

Amendments to 839-009-0210, 839-009-0340, and 839-009-0380 adding a definition of spouse.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

**FILED**  
12-31-13 3:04 PM  
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Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending rules in Division 839-009 to add new statutory provisions, add a leave form, and make housekeeping edits  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:** 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363, and 839-009-0430 and other Division 9 rules as necessary

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.090- 659A.099, H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 would implement newly enacted legislation on OFLA.

Further proposed amendments to 839-009-0210 would be for housekeeping and to make the definition of health care provider consistent with the statutes.

Proposed amendments to 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363 would implement newly enacted legislation regarding public employers with respect to victims under this section.

Proposed amendments to OAR 839-009-0325 would clarify what posting is required under newly enacted legislation. Currently 839-009-0325 does not include a posting requirement for ORS 659A.170 to 659A.285. Newly amended legislation creates this requirement.

Proposed amendments to 839-009-0340 would reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Proposed amendments to 839-009-0430 would include an example request form for OMFLA which a covered employee may provide.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending rules in Division 839-009 to add new statutory provisions, add a leave form, and make housekeeping edits

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

**In the Matter of:**

Amending rules in Division 839-009

Statutory Authority: ORS 659A,805

**Other Authority:**

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.090- 659A.099, H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**Need for the Rule(s):**

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Further amendments provide a sample form for employers for OMFLA leave.

**Documents Relied Upon, and where they are available:**

H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2950/Enrolled>

H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2903/Enrolled>

H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB3263/Enrolled>

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed amendments. The amendments are to make the rules consistent with existing laws or newly enacted legislation. Further amendments provide an example of a form covered employers may use regarding OMFLA leave.

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:



The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory specifications over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-009-0380

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 8-2015, f. & cert. ef. 6-24-15

BLI 5-2015, f. & cert. ef. 5-18-15

BLI 16-2013, f. & cert. ef. 12-31-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries  
Val Hoyle  
Commissioner

## PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCCLA and updating OFLA rules.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-009-0265; 839-009-0370; 839-009-0380; 839-009-0390; 839-009-0400; 839-009-0410; 839-009-0420; 839-009-0430; 839-009-0440; 839-009-0450; 839-009-0460

**AMEND:** OAR 839-009-0210; 839-009-0220; 839-009-0240; 839-009-0245; 839-009-0250; 839-009-0260; 839-009-0270; 839-009-0280; 839-009-0290; 839-009-0300; 839-009-0321; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365

Stat. Auth.: ORS 659A.805

Other Auth.: IIB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

	<b>PORTLAND</b> 800 NE Oregon St. Suite 1045 Portland, OR 97232-2180 (971) 673-0761	<b>SALEM</b> 3865 Wolcott St. NE, E-1 Salmon, OR 97132-7636 (503) 373-7636	<b>EUGENE</b> 1400 Executive Parkway, Suite 200 Eugene, OR 97401-2158 (541) 686-7623	2/24/10 Date
Authorized Signer	Printed Name	Printed Name	Printed Name	

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

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Advisory Committee

www.oregon.gov/boli





# Oregon

Secretary of State

Bureau of Labor and Industries

## NOTICE OF PROPOSED RULEMAKING\*

Val Hoyle

A Statement of Need and Fiscal Impact accompanies this form.

Commissioner

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

### RULE CAPTION

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing

**ADOPT:** OAR 839-009-0265; 0326; 0370; 0380; 0390; 0400; 0410; 0420; 0430; 0440; 0450; 0460 and additional Division 9 rule numbers as necessary

**AMEND:** Division 9, Oregon Family Leave Act and Oregon Victims of Certain Crimes Leave Act administrative rules

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2744, SB 928, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

### RULE SUMMARY

The proposed rules would implement the newly enacted Oregon Military Family Leave Act, which entitles spouses and domestic partners of military service members to 14 days' family leave prior to service member's deployment or leave from deployment during a period of military conflict (HB 2744).

The proposed rules would amend the rules implementing the Oregon Victims of Certain Crimes Leave Act (OVCCLA) to include newly enacted reasonable safety accommodation requirements for employees who are victims of certain crimes (SB 928).

The proposed rules would amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations, and clarify, edit and make housekeeping changes.

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

November 13, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Amy K. Klare, Administrator, Civil Rights Division

September 25, 2009

Signature

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm on the first following workday. A public rulemaking hearing may be requested by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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# Oregon

Secretary of State

Bureau of Labor and Industries

Val Hoyle

Commissioner

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries - Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing new Military Family Leave Act and amendments to OVCCLA and updating OFLA rules.  
Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing newly enacted Military Family Leave Act and amendments to Oregon Victims of Certain Crimes Leave Act and updating Oregon Family Leave Act rules.

Statutory Authority: ORS 659A.805

Other Authority: HB 2744 and SB 928, Oregon Legislative Assembly, 2009

Stats. Implemented: HB 2744 (Oregon Military Family Leave Act), SB 928 (amending OVCCLA), Oregon Legislative Assembly 2009; ORS 659A.270 to .285 (OVCCLA); ORS 659A.150 to .186 (OFLA)

Need for the Rule(s): The proposed rules and amendments would implement the newly enacted Oregon Military Family Leave Act (OMFLA), newly enacted amendments to the Oregon Victims of Certain Crimes Leave Act (OVCCLA), and amend the rules implementing the Oregon Family Leave Act (OFLA) to reflect some recent amendments to federal Family and Medical Leave Act (FMLA) regulations and to clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: HB 2744, SB 928, 2009; available on the Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The new enacted and newly amended laws that the proposed rules would implement are in current statutes or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal or economic impact for public or private employers because the proposed rule amendments would implement and clarify laws already enacted, making it less likely that covered employers will inadvertently violate the laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules per se is anticipated because the statutory amendments the rules for the most part would implement are or will be in statutes over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the statutory amendments the rules for the most part would implement are or will be statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to certain employers and employees and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

OFLA and OMFLA apply to Oregon employers of 25 or more employees. OVCCLA applies to employers of 6 or more employees. Thus the proposed rules would also apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules. Existing Oregon employee leave laws require some recordkeeping etc. and the newly enacted laws and amendments are not anticipated to substantially increase this. However, the proposed rules would merely implement provisions of these laws, not add additional requirements.

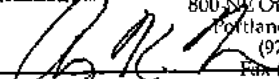
c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administrative costs are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes

Signature:   
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

SALEM  
3605 Wolverine St. NE, E-1  
Salem, OR 97305-1268  
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Amy K. Clark, Administrator, Civil Rights Division

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1400 Executive Parkway, Suite 200  
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(541) 686-7623  
Fax (541) 686-7620

Printed name:

Date

September 25, 2009

Administrative Rules Division, Bureau of Labor and Industries, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, TAC 825-2007

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1046, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending rules in Division 839-009 to add new statutory provisions, add leave form, housekeeping edits

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0270, 839-009-0280, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0362, 839-009-0383, 839-009-0380, 839-009-0430

839-009-0345  
9/1/14

**REPEAL:**

839-009-0390  
9/1/14

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.806

**Other Authority:**

**Statutes Implemented:**

ORS 659A.150-659A.189, 659A.043, 659A.046, H.B. 2950, 77th Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77th Leg., Reg. Session (Or. 2013), ORS 659A.090-659A.099, H.B. 3263, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 implement newly enacted legislation on OFLA.

Further amendments to 839-009-0210 are for housekeeping and to make the definition of health care provider consistent with the statutes.

Amendments to 839-009-0270 clarify that employer payment of health benefits is an employer option for OFLA-only leave.

Amendments to 839-009-0280 replace "available" paid leave with "accrued" paid leave for clarification.

Amendments to 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363 implement newly enacted legislation regarding public employers with respect to victims under this section.

Amendments to OAR 839-009-0325 and 839-009-0330 clarify what posting is required under newly enacted legislation. Currently 839-009-0325 and 839-009-0330 do not include a posting requirement for ORS 659A.170 to 659A.285. Newly amended legislation creates this requirement.

Amendments to 839-009-0340 reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of



Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-009-0340 and 839-009-0380 remove the word "calendar" in reference to year to be consistent with the statutes.

Amendments to 839-009-0430 include an example request form for OMFLA which a covered employee may provide.

Amendments to 839-009-0210, 839-009-0340, and 839-009-0380 adding a definition of spouse.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

**FILED**  
12-31-13 3:04 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending rules in Division 839-009 to add new statutory provisions, add a leave form, and make housekeeping edits  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:**

**AMEND:** 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363, and 839-009-0430 and other Division 9 rules as necessary

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.090- 659A.099, H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-009-0210, 839-009-0230, 839-009-0240, 839-009-0250 would implement newly enacted legislation on OFLA.

Further proposed amendments to 839-009-0210 would be for housekeeping and to make the definition of health care provider consistent with the statutes.

Proposed amendments to 839-009-0325, 839-009-0340, 839-009-0362, 839-009-0363 would implement newly enacted legislation regarding public employers with respect to victims under this section.

Proposed amendments to OAR 839-009-0325 would clarify what posting is required under newly enacted legislation. Currently 839-009-0325 does not include a posting requirement for ORS 659A.170 to 659A.285. Newly amended legislation creates this requirement.

Proposed amendments to 839-009-0340 would reflect newly enacted legislation and create consistency among the definitions of victim. Currently OAR 839-009-0340 includes definitions which are no longer consistent with newly enacted legislation. It also currently contains a definition of Victim of Harassment that is not consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Proposed amendments to 839-009-0430 would include an example request form for OMFLA which a covered employee may provide.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending rules in Division 839-009 to add new statutory provisions, add a leave form, and make housekeeping edits

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending rules in Division 839-009

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS 659A.150-659A.186, 659A.043, 659A.046, H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.270-659A.285, H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 659A.090- 659A.099, H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Further amendments provide a sample form for employers for OMFLA leave.

Documents Relied Upon, and where they are available:

H.B. 2950, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2950/Enrolled>

H.B. 2903, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2903/Enrolled>

H.B. 3263, 77<sup>th</sup> Leg., Reg. Session (Or. 2013) available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB3263/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The amendments are to make the rules consistent with existing laws or newly enacted legislation. Further amendments provide an example of a form covered employers may use regarding OMFLA leave.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory specifications over which BOLI has no discretion.

*Marcia Ohlemiller*

Signature

Marcia Ohlemiller

Printed name

10/15/2013

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

**Authorization Page**  
Generated on May 15, 2015 11:11PM  
**PERMANENT ADMINISTRATIVE RULES**

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us
Rules Coordinator	Email Address
800 NE Oregon St., Ste. 1045, Portland, OR 97232	971-673-0784
Address	Telephone
Upon filing.	
Adopted on	
Upon filing.	
Effective date	

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0320, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0430, 839-009-0460

**REPEAL:** 839-009-0335

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805, 659A.093, 651.061, 654.062

**Other Auth.:**

Stats. Implemented: ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing 'calendar' references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

 Maria Ohleniller 5/15/15  
Authorized Signer Printed Name Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

BLI 5-2015-1 5-18-15

NPRM & Final Impact Missing



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
6-24-15 10:00 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>839</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	<u>(971) 673-0784</u>
Address	

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 16 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-009-0210, 839-009-0220, 839-009-0230, 839-009-0240, 839-009-0250, 839-009-0260, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0350, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0363, 839-009-0365, 839-009-0380, 839-009-0410, 839-009-0420, 839-009-0480.

**REPEAL:**

839-009-0335

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 859A.805, 859A.093, 851.061, 854.002

**Other Authority:**

**Statutes Implemented:**

ORS chapter 859A, 192.440(3), 192.501(8), 654.002, 345.010, 659.850, 408.230, 408.235, 663.050, 652.355

**RULE SUMMARY**

This permanent rule filing supersedes a permanent rule filing on 5/18/15 amending the same rules. The 5/18/15 filing had technical errors, invalidating the filing.

This permanent rule filing consists of amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify OFLA requirements for sick child leave, leave for the death of a family member, definition of child, employee discipline for failure to give notice of OFLA leave, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law.

This permanent rule filing reinstates the temporary rule <sup>was</sup> that ~~was~~ in effect from 11/20/14 to 5/15/15, which: 1) ~~clarify that sick child leave applies only to children under the age of 18 or an adult dependent child limited by a physical or mental impairment, and~~ 2) ~~redefine "spouse" to include individuals in marriages recognized by any state's law or by a foreign jurisdiction, individuals in common law marriages and those in domestic partnerships or similar relationships recognized by any state.~~

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

NPRM of Fiscal Impact missing

BLI 8-2015 6-24-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-006-0480

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 12-2015, f. & cert. ef. 8-28-15

BLI 2-2012, f. & cert. ef. 2-8-12

BLI 15-2011, f. 12-30-11, cert. ef. 1-1-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order, List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**CORRECTED** Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**

FEB 24 2010

ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division	839	
Agency and Division	Administrative Rules Chapter Number	
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments and amendments regarding disability, veterans' preference and discrimination based on uniformed service.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-006-0307; 839-006-0480; 839-006-0202; 839-005-0206

**AMEND:** 839-005-0000; 839-005-0003; 839-005-0005; 839-005-0010; 839-005-0021; 839-005-0195; 839-005-0200; 839-005-0205; 839-005-0215; 839-005-0220; 839-006-0200; 839-006-205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0330; 839-006-0335; 839-006-0435; 839-006-0440; 839-006-0445; 839-006-0450; 839-006-0455; 839-006-0460; 839-006-0465; 839-006-0470

Stat. Auth.: ORS 659A.805

Other Auth.: HB 3256, HB 2510 and SB 874, Oregon Legislative Assembly 2009


Stats. Implemented: HB 2510 (removing restrictions on civil service Veterans' Preference); HB 3256 (making discrimination on the basis of uniformed service an unlawful employment practice); SB 874 (conforming Oregon disability discrimination law to federal Americans with Disabilities Act Amendments Act of 2008).

**RULE SUMMARY**

The proposed rules and amendments would implement amendments to statutes providing for employment preference for veterans. (HB 2510).

The proposed rules and amendments would implement amendments to disability discrimination statutes to conform them to the federal Americans with Disabilities Act Amendments Act of 2008. (SB 874).

The proposed rules would implement newly enacted statutes prohibiting discrimination in employment on the basis of uniformed service. (HB 3256).

	Brad Avakian	2/23/10
Authorized Signer	Printed name	Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

**Disability Rights Virtual Advisory Committee**

Max Brown, Ph.D  
Legislation and Policy Analyst  
Seniors and People with Disabilities  
Oregon Department of Human Services  
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Salem, OR 97301  
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Lake Oswego OR 97034

Larry K Amburgey  
Littler Mendelson  
121 SW Morrison St Ste 900  
Portland OR 97204

Steve Brischetto  
621 SW Morrison St Ste 1025

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division  
Agency and Division

839

Administrative Rules Chapter Number

Marcia Ohlemiller  
Rules Coordinator

800 NE Oregon St. #1045, Portland, OR 97232  
Address

971-673-0784  
Telephone

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions.  
**AMEND:** Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.

Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature

Amy K. Klars, Administrator, Civil Rights Division

Printed name

October 15, 2009

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005



Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries – Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.

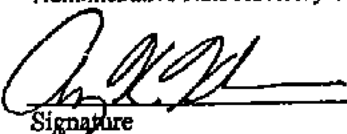
c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.



Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date

Portland OR 97205

OSB Administrative Law Section Chair

Christopher Cauble

Cauble Dole Sorenson & Ransom

111 SE 6th St

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Portland OR 97214

Department of Administrative Services Consult  
Mark Rasmussen  
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Salem, OR 97301-3967

Oregon Commission for the Blind  
Linda Mock, Administrator  
535 SE 12th Ave.  
Portland, Oregon 97214-2488

10/19/09 mailing

**Veterans' Affairs Virtual Advisory Committee**

Tino E. Ornelas, Chair  
Advisory Committee to the Director of Veterans' Affairs  
228 SW Meadow Dr.  
Beaverton, OR 97006

Irv Fletcher, Vice-Chair  
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Paula Brown, Deputy Director  
Oregon Department of Veterans' Affairs  
700 Summer St. NE  
Salem, OR 97301-1285

i Missing Amendments

BL1 15-2011 f. 12-30-11 cat. 1/1/12

BL1 2-2012 f. & cat. ef. 2/8/12

BL1 12-2015 f. & cat. ef. 8-28-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-006-0350

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

Renumbered from 839-006-0332 by BLI 15-2013, f. & cert. ef 12-30-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**CORRECTED** Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**

FEB 24 2010

ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division	839	
Agency and Division	Administrative Rules Chapter Number	
Marcia Ohlemiller,	800 NE Oregon St. Suite 1045, Portland, OR 97232-2180	971-673-0784
Rules Coordinator	Address	Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments and amendments regarding disability, veterans' preference and discrimination based on uniformed service.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-006-0307; 839-006-0480; 839-006-0202; 839-005-0206

**AMEND:** 839-005-0000; 839-005-0003; 839-005-0005; 839-005-0010; 839-005-0021; 839-005-0195; 839-005-0200; 839-005-0205; 839-005-0215; 839-005-0220; 839-006-0200; 839-006-205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0330; 839-006-0335; 839-006-0435; 839-006-0440; 839-006-0445; 839-006-0450; 839-006-0455; 839-006-0460; 839-006-0465; 839-006-0470

Stat. Auth.: ORS 659A.805

Other Auth.: HB 3256, HB 2510 and SB 874, Oregon Legislative Assembly 2009


Stats. Implemented: HB 2510 (removing restrictions on civil service Veterans' Preference); HB 3256 (making discrimination on the basis of uniformed service an unlawful employment practice); SB 874 (conforming Oregon disability discrimination law to federal Americans with Disabilities Act Amendments Act of 2008).

**RULE SUMMARY**

The proposed rules and amendments would implement amendments to statutes providing for employment preference for veterans. (HB 2510).

The proposed rules and amendments would implement amendments to disability discrimination statutes to conform them to the federal Americans with Disabilities Act Amendments Act of 2008. (SB 874).

The proposed rules would implement newly enacted statutes prohibiting discrimination in employment on the basis of uniformed service. (HB 3256).

	Brad Avakian	2/23/10
Authorized Signer	Printed name	Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



**Disability Rights Virtual Advisory Committee**

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Legislation and Policy Analyst  
Seniors and People with Disabilities  
Oregon Department of Human Services  
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~~Christopher Cauble~~

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Linda Mock, Administrator  
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Portland, Oregon 97214-2488

10/19/09 mailing

**Veterans' Affairs Virtual Advisory Committee**

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228 SW Meadow Dr.  
Beaverton, OR 97006

Irv Fletcher, Vice-Chair  
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Paula Brown, Deputy Director  
Oregon Department of Veterans' Affairs  
700 Summer St. NE  
Salem, OR 97301-1285

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing ADOPT: OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions. AMEND: Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.

Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.

Stat. Auth.: ORS 659A.805

Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.

Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature

Amy K. Klare, Administrator, Civil Rights Division

October 15, 2009

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

Secretary of State  
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries – Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.

  
Signature

Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marla Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-006-0201, 839-006-0292, 839-006-0345

**AMEND:**

839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0296, 839-006-0305

**REPEAL:**

**RENUMBER:**

839-006-0332 to 839-006-0350

**AMEND AND RENUMBER:**

839-006-0307 to 839-006-0240 ~~0340~~ *421494*

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 859A.103 ~~to~~ 659A.142; H.B. 2111, 77th Leg., Reg. Session (Or. 2013); H.B. 2668, 77th Leg., Reg. Session (Or. 2013); S.B. 610, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-006-0205 and 839-006-0212 make the rules consistent with newly enacted legislation regarding substantial limitations.

Amendments to 839-006-0270 and 839-006-0296 and adoption of 839-006-0202 provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0201 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.130. Amendments to 839-006-0290 implement newly enacted legislation regarding places of public accommodation and state government.

Amendments to 839-006-0305 modify the definition of place of public accommodation consistent with newly enacted legislation.

Amendments and renumbering of 839-006-0307 to 839-006-0340 reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities.

Adoption of 839-006-0345 provides information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

Renumbering of 839-006-0332 to 839-006-0360 moves the existing rule without amendments, as the subject of the rule, requirements for infant lodging, is separate and not a part of the Oregon disability statutes.

**FILED**  
12-30-13 5:40 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839  
Administrative Rules Chapter Number

Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232	971-673-0784
Rules Coordinator	Address	Telephone

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-006-0291, 839-006-0292, 839-006-0345

**AMEND:** 839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305, and any other Division 6 rules as necessary.

**REPEAL:**

**RENUMBER:** 839-006-0332 to 839-006-0350;

**AMEND & RENUMBER:** 839-006-0307 to 839-006-0340

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-006-0205 and 839-006-0212 would make the rules consistent with newly enacted legislation regarding substantial limitations.

Proposed amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 would provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Proposed amendments to 839-006-0290 would implement newly enacted legislation regarding places of public accommodation and state government.

Proposed amendments to 839-006-0305 would modify the definition of place of public accommodation consistent with newly enacted legislation.

Proposed amendments to and renumbering of 839-006-0307 to 839-006-0340 would reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The proposed amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf on individuals with disabilities

The proposed adoption of 839-006-0345 will provide information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

The proposed renumbering of 839-006-0332 to 839-006-0350, will move the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Statutory Authority: ORS 659A.805

Other Authority:

**Stats. Implemented:** Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Proposed amendments and adoptions would make the rules consistent with newly enacted legislation and the Americans with Disabilities Act. Adoptions of 839-006-0291, 839-006-0292, and 839-006-0345 would implement newly enacted legislation or clarify responsibilities under existing legislation.

Documents Relied Upon, and where they are available:

H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2111/Enrolled>.H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2668/Enrolled>.S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Tcx/SB610/Enrolled>.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or make the rules consistent with newly enacted legislation which BOLI has no authority not to enforce or to change.

Marcia.l.ohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-006-0340

Date Rule Became Effective: February 24, 2010

Date Review Due: February 24, 2015

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 12-2015, f. & cert. ef. 8-28-15

Renumbered from 839-006-0307 by BLI 15-2013, f. & cert. ef 12-30-13

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NB Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. #1045, Portland, OR 97232	971-673-0784
Rules Coordinator	Address	Telephone

**RULE CAPTION**

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** OAR 839-005-0138, implementing statutes prohibiting employer discrimination against child support obligors; OAR 839-005-0140, implementing statutes requiring employer accommodation of religious leave and clothing; OAR 839-006-0331, implementing statutes requiring transient housing to provide lifts for individuals with disabilities. OAR 839-006-0332, implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions.  
**AMEND:** Division 5 rules to conform and cross reference with new rules implementing statute prohibiting employer discrimination against child support obligors and implementing statutes prohibiting employer discrimination against uniformed service members.  
Division 6 rules to conform and cross reference with new rules implementing statutes requiring toilet access in places of public accommodation for individuals with qualifying medical conditions and implementing statutes requiring transient housing to provide lifts for individuals with disabilities.  
Stat. Auth.: ORS 659A.805  
Other Auth.: ORS 25.424(3); HB 2600, SB 786 and SB 277, Oregon Legislative Assembly 2009.  
Stats. Implemented: ORS 25.424(3) (prohibiting employer discrimination against child support obligors), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 786 (requiring accommodation of religious leave) SB 277 (requiring toilet access for customers with eligible medical conditions in places of public accommodation).

**RULE SUMMARY**

~~The proposed rules would implement statutes making discrimination by employers against child support obligors an unlawful employment practice. (ORS 25.424(3))~~

The proposed rules would implement newly enacted statutes requiring places of public accommodation to provide access to employee toilets for customers with eligible medical conditions. (SB 277)

The proposed rules would implement newly enacted statutes requiring employers to reasonably accommodate wearing of religious clothing and leave for religious practices. (SB 786)

The proposed rules would implement newly enacted statutes requiring transient lodging of 175 or more units to provide lifts for individuals with disabilities. (HB 3256)

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

December 7, 2009

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

  
Signature

Amy K. Klare, Administrator, Civil Rights Division

Printed name

October 15, 2009

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

Secretary of State  
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries – Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Implementing protections for religious worship and child support obligors; requiring physical accommodations for eligible disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Proposed rules implementing new statutes protecting religious worship by employees; making discrimination against child support obligors an unlawful employment practice; requiring access to toilets in places of public accommodation for individuals with eligible medical conditions; requiring lifts for individuals with disabilities in transient housing.

Statutory Authority: ORS 659A.805

Other Authority: ORS 25.424(3); HB 2600, SB 277 and SB 786, Oregon Legislative Assembly, 2009

Stats. Implemented: ORS 25.424(3) (making discrimination against child support obligors an unlawful employment practice), HB 2600 (requiring lifts for individuals with disabilities in transient lodging), SB 277 (requiring access to toilets in places of public accommodation for individuals with eligible medical conditions), and SB 786 (requiring employer accommodation of leave and clothing for religious worship)

Need for the Rule(s): The proposed rules and amendments would implement statutes (1) prohibiting discrimination on the basis of child support obligations, (2) requiring employer accommodation of religious leave and dress; (3) requiring access to toilets in places of public accommodation for individuals with eligible medical conditions, (4) requiring lifts in transient lodging for individuals with disabilities; and would clarify, edit and make housekeeping changes.

Documents Relied Upon, and where they are available: ORS 25.424(3); HB 2600, SB 277, SB 786 2009; available on Oregon Legislature website.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current law or will be on January 1, 2010 and fiscal or economic impact, if any, would result from those laws. There is potential positive fiscal and economic impact for public and private employers because the proposed rule amendments would clarify laws, making it less likely that covered employers will inadvertently violate them

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No new cost of compliance to the Bureau from the proposed rules is anticipated because the statutory amendments the rules for the most part would implement are or will be in laws over which the Bureau currently has enforcement authority.

No new cost of compliance of the proposed rules per se on Oregon's 532 state and local government employers is anticipated because the rules for the most part would implement statutory requirements.

No new cost of compliance of the proposed rules per se on the public is anticipated because the rules implement laws that apply to public bodies and certain business owners, housing providers and employers and not to the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

Oregon discrimination laws apply to Oregon employers generally. Thus the proposed rules would apply to those employers. Oregon Employment Department information indicates that approximately 10,000 private employers would potentially be affected by the proposed rules. Lift requirements in transient lodging would apply to facilities with 175 or more units. Toilet access requirements would apply to all Oregon places of public accommodation with 3 or more employees.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping or other administrative activities are required or anticipated under the proposed rules.

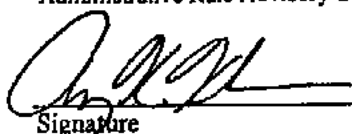
c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Small business representatives are being asked to serve on the Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes.



Amy K. Klare, Administrator, Civil Rights Division October 15, 2009

Printed name

Date



Secretary of State  
**CORRECTED** Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**

FEB 24 2010

ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 24, 2010 by the

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller,

800 NE Oregon St. Snite 1045, Portland, OR 97232-2180

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 24, 2010. Rulemaking Notice was published in the December 2009 Oregon Bulletin.\*\*

**RULE CAPTION**

Implementing statutory enactments and amendments regarding disability, veterans' preference and discrimination based on uniformed service.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

\* Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-006-0307; 839-006-0480; 839-006-0202; 839-005-0206

**AMEND:** 839-005-0000; 839-005-0003; 839-005-0005; 839-005-0010; 839-005-0021; 839-005-0195; 839-005-0200; 839-005-0205; 839-005-0215; 839-005-0220; 839-006-0200; 839-006-205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0330; 839-006-0335; 839-006-0435; 839-006-0440; 839-006-0445; 839-006-0450; 839-006-0455; 839-006-0460; 839-006-0465; 839-006-0470

Stat. Auth.: ORS 659A.805

Other Auth.: HB 3256, HB 2510 and SB 874, Oregon Legislative Assembly 2009

Stats. Implemented: HB 2510 (removing restrictions on civil service Veterans' Preference); HB 3256 (making discrimination on the basis of uniformed service an unlawful employment practice); SB 874 (conforming Oregon disability discrimination law to federal Americans with Disabilities Act Amendments Act of 2008).

**RULE SUMMARY**

The proposed rules and amendments would implement amendments to statutes providing for employment preference for veterans. (HB 2510).

The proposed rules and amendments would implement amendments to disability discrimination statutes to conform them to the federal Americans with Disabilities Act Amendments Act of 2008. (SB 874).

The proposed rules would implement newly enacted statutes prohibiting discrimination in employment on the basis of uniformed service. (HB 3256).



Brad Avakian

2/23/10

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

\*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

**Disability Rights Virtual Advisory Committee**

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Seniors and People with Disabilities  
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10/19/09 mailing

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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

certify that the attached copies\* are true, full and correct copies of the PERMANENT Rules adopted on October 13, 2011 by the Bureau of Labor and Industries, Civil Rights Division 839

Agency and Division	Address	Administrative Rules Chapter Number
Marcia L. Ohlemiller Rules Coordinator	800 NE Oregon St. #1045 Portland, OR 97232	971-673-0784

to become effective October 14, 2011. Rulemaking Notice was published in the December 2010 Oregon Bulletin.\*\*

**RULE CAPTION**

New and amended rule language to conform to and implement statutes and correct typographical errors.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

AMEND: 839-003-0005; 839-003-0025; 839-003-0100; 839-005-0010; 839-005-0026; ~~839-005-0031~~; 839-005-0070; 839-005-0080; 839-005-0200; 839-005-0206; 839-005-0220; 839-006-0240; 839-006-0275; 839-006-0307; 839-006-0455; 839-009-0210; 839-009-0250; 839-009-0280; 839-009-0340; 839-009-0365; 839-009-0400; 839-009-0450.

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885

**RULE SUMMARY**

The proposed rules and amendments would clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; and clarify how a discrimination complaint is verified.

*Doreen McKean, Deputy Comm.*  
Authorized Signer

Brad Avakian  
Printed name

Oct. 13, 2011  
Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. #1045 Portland OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

**RULE CAPTION**

New and amended rule language to conform to and implement statutes and correct typographical errors.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

**AMEND:** OAR 839-003-0100 and other Division 3 rules as necessary; OAR 839-005-0080, OAR 839-005-0206, OAR 839-005-0210, OAR 839-005-0220, and other Division 5 rules as necessary; OAR 839-006-0200 and other Division 6 rules as necessary; OAR 839-009-0250, OAR 839-009-0260, OAR 839-009-0280, OAR 839-009-0290 and other Division 9 rules as necessary; OAR 839-010-0100 and other Division 10 rules as necessary.

**RENUMBER:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

**AMEND & RENUMBER:** Division 3 rules as necessary; Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary; Division 10 rules as necessary.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.199; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885; other sections of ORS chapter 659A as appropriate.

**RULE SUMMARY**

The proposed rules and amendments would clarify the individuals protected by prohibitions against use of credit history in employment; clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform implementation of statutes prohibiting discrimination based on military service with federal law and make such statutes internally consistent; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that statutes require costs of completing OFLA verification forms to be paid by the employer; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify application of leave year for employees using pregnancy disability leave and parental leave; clarify the amount of time employers have to provide notice that an employee using unforseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; clarify how a discrimination complaint is verified; clarify that reports of violations of law to administrative agencies are protected under ORS 659A.199; implement statutes applying to use of physical force regarding health care employees.

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

January 3, 2011

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signature

Marcia L. Ohlemiller

November 15, 2010

Printed name

Date

\*Rulemaking Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Rulemaking Notice in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

ARC 923-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

New and amended rule language to conform to and implement statutes and correct typographical errors.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: Civil Rights Division Rulemaking November 2010

Statutory Authority: ORS 659A.805

Other Authority: N/A

Stats. Implemented: ORS 659A.103 through 659A.142; ORS 659A.145; ORS 659A.199; ORS 659A.421; ORS 659A.820; ORS 659A.825; ORS 659A.870 through 659A.885; other sections of ORS chapter 659A as appropriate.

**Need for the Rule(s):**

The proposed rules and amendments would clarify the individuals protected by prohibitions against use of credit history in employment; clarify that service animals may be a reasonable accommodation in housing for an individual with a disability; implement statutes prohibiting discrimination based on disability in public accommodation consistent with federal law; conform implementation of statutes prohibiting discrimination based on military service with federal law and make such statutes internally consistent; conform definition of "in loco parentis" as used in the Oregon Family Leave Act (OFLA) with federal definition; clarify that statutes require costs of completing OFLA verification forms to be paid by the employer; clarify that the period of time for an employer to ask for more information about a request for OFLA leave and the period of time the employee has to respond is more than a total of 5 days; clarify application of leave year for employees using pregnancy disability leave and parental leave; clarify the amount of time employers have to provide notice that an employee using unforeseeable OFLA leave must use accrued paid leave; clarify acceptable means of notice that employees taking OFLA must use paid leave; clarify amount of time employer has to notify employees they are eligible for OFLA leave; clarify how a discrimination complaint is verified; clarify that reports of violations of law to administrative agencies are protected under ORS 659A.199; implement statutes applying to use of physical force regarding health care employees.

Documents Relied Upon, and where they are available: N/A

**Fiscal and Economic Impact:**

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No fiscal impact is anticipated.
2. Cost of compliance effect on small business (ORS 183.336):
  - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: 107,103 small businesses will be subject to these rules.
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None.
  - c. Equipment, supplies, labor and increased administration required for compliance: None.

How were small businesses involved in the development of this rule? Small businesses are represented on our agency mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: Proposed rules and amendments are not substantive changes.



Signature

Marcia L. Ohlemiller November 15, 2010

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 925-2007



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 873-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1046, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-006-0281, 839-006-0282, 839-006-0345

**AMEND:**

839-006-0205, 839-006-0212, 839-006-0270, 839-006-0280, 839-006-0286, 839-006-0305

**REPEAL:**

**RENUMBER:**

839-006-0332 to 839-006-0350

**AMEND AND RENUMBER:**

839-006-0307 to 839-006-~~0240~~ 0340 *12/14/93*

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 659A.103 & 659A.142; H.B. 2111, 77th Leg., Reg. Session (Or. 2013); H.B. 2666, 77th Leg., Reg. Session (Or. 2013); S.B. 610, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-006-0205 and 839-006-0212 make the rules consistent with newly enacted legislation regarding substantial limitations.

Amendments to 839-006-0270 and 839-006-0286 and adoption of 839-006-0292 provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0281 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Amendments to 839-006-0280 implement newly enacted legislation regarding places of public accommodation and state government.

Amendments to 839-006-0305 modify the definition of place of public accommodation consistent with newly enacted legislation.

Amendments and renumbering of 839-006-0307 to 839-006-0340 reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities.

Adoption of 839-006-0345 provides information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

Renumbering of 839-006-0332 to 839-006-0350 moves the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

**FILED**

12-30-13 5:40 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-006-0291, 839-006-0292, 839-006-0345

**AMEND:** 839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305, and any other Division 6 rules as necessary.

**REPEAL:**

**RENUMBER:** 839-006-0332 to 839-006-0350;

**AMEND & RENUMBER:** 839-006-0307 to 839-006-0340

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 - 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-006-0205 and 839-006-0212 would make the rules consistent with newly enacted legislation regarding substantial limitations.

Proposed amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 would provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Proposed amendments to 839-006-0290 would implement newly enacted legislation regarding places of public accommodation and state government.

Proposed amendments to 839-006-0305 would modify the definition of place of public accommodation consistent with newly enacted legislation.

Proposed amendments to and renumbering of 839-006-0307 to 839-006-0340 would reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The proposed amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf on individuals with disabilities

The proposed adoption of 839-006-0345 will provide information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

The proposed renumbering of 839-006-0332 to 839-006-0350, will move the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Statutory Authority: ORS 659A.805

Other Authority:

**Stats. Implemented:** Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Proposed amendments and adoptions would make the rules consistent with newly enacted legislation and the Americans with Disabilities Act. Adoptions of 839-006-0291, 839-006-0292, and 839-006-0345 would implement newly enacted legislation or clarify responsibilities under existing legislation.

Documents Relied Upon, and where they are available:

H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2111/Enrolled>.

H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2668/Enrolled>.

S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/SB610/Enrolled>.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or make the rules consistent with newly enacted legislation which BOLI has no authority not to enforce or to change.

Marcia.l.ohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

2015 Amendment

8/28/15 missing  
minimal changes

839-006-0340

**Discrimination Theories: Discrimination against Individuals with Disabilities by State Government or Places of Public Accommodation**

(1) A violation of discrimination laws against individuals with disabilities may involve either intentional or unintentional discrimination. Discrimination against individuals with disabilities need not be intentional to be unlawful. Unintentional discrimination may occur, for example, in situations involving adverse impact. To be protected from discrimination based on disability, an individual must have a disability, as defined in ORS 659A.104 and the relevant rules.

(2) Substantial evidence of intentional unlawful discrimination against an individual exists if the investigation of the Civil Rights Division ("division") reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(14) of these rules;

(b) The individual has a disability;

(c) The individual was harmed by an action of the respondent; and

(d) The individual's disability was the motivating factor for the respondent's action. In determining whether the individual's disability was the motivating factor for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because that individual has a disability.

(B) Different or Unequal Treatment Theory: The respondent treats individuals with disabilities differently than others who do not have disabilities. When the respondent makes this differentiation because of the individual's disability and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the individual was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the individual differently than comparably situated individuals who do not have disabilities. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that an individual's disability was a motivating factor for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(i) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(ii) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's disability was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The individual with a disability at all times has the burden of proving that the individual's disability was the motivating factor for the respondent's unlawful action.

(3) Adverse impact by a place of public accommodation or by state government on the basis of disability: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (2) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(12) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(4) Harassment by a place of public accommodation or by state government on the basis of disability:

(a) Conduct of a verbal or physical nature on the basis of disability is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (2) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of creating an intimidating, hostile or offensive environment; or

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of receiving services, accommodations, advantages, facilities or privileges from a place of public accommodation or services, programs or activities of state government; or

(C) Submission to or rejection of such conduct is used as the basis for decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive environment is whether a reasonable person in the circumstances of the individual against whom the harassment is directed would so perceive it.

**Statutory/Other Authority:** ORS 659A.805

**Statutes/Other Implemented:** ORS 659A.103 & 659A.142

**History:**

BLI 12-2015, f. & cert. ef. 8-28-15

Renumbered from 839-006-0307 by BLI 15-2013, f. & cert. ef. 12-30-13

BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11

BLI 8-2010, f. & cert. ef. 2-24-10



## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-010-0305

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking? Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?  
yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?  
Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 2-2015, f. & cert. ef. 1-28-15

4) Is the rule still needed?  
yes

5) What impacts has the rule had on small business?  
None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on December 30, 2013 by the

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. Ste. 1045 Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective upon filing.

Rulemaking Notice was published in the November 2013, *Oregon Bulletin*.

**RULE CAPTION**

Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 839-010-0300, 839-010-0305, 839-010-0310

**AMEND:** 839-010-0000

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: S.B. 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.

*Marcia Ohlemiller*

Marcia Ohlemiller

12-30-13

Authorized Signer

Printed name

Date

Note: Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month's *Oregon Bulletin* and online *OAR Compilation* updates.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Ste. 1045 Portland, OR 97232 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION** Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-010-0300, 839-010-0305, 839-010-0310

**AMEND:** 839-010-0000 and any other Division 10 rules as necessary.

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS S.B. 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed Amendments would clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules would implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.l.ohlemiller@state.or.us

Marcia Ohlemiller

10/15/13

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment and Adoption of Rules in 839-010 to Implement Whistleblower Protection for Reporting Possible Violations of Election Laws

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: S.B. 148, 77th Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Amendments clarify the scope and purpose of the rules in correctly stating the provisions of the ORS enforced by the Bureau of Labor and Industries. New rules 839-010-0300, 839-010-0305, 839-010-0310 implement newly enacted legislation.

Documents Relied Upon, and where they are available:

Senate Bill 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/list/>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The newly enacted law that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates there are 107,103 small businesses in Oregon. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would implement statutory protections which BOLI has no discretion not to enforce or to change.

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

## PERMANENT ADMINISTRATIVE RULES

**FILED**  
1-28-15 12:46 PM  
Val Hoyle  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the Oregon Bulletin.

*Oct. 1, 2014 2/4/15  
MO*



### RULE CAPTION

Amendments to clarify, conform with authorities, correct citations.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

#### ADOPT:

#### AMEND:

839-010-0000, 839-010-0010, 839-010-0020, 839-010-0100, 839-010-0200, 839-010-0205, 839-010-0210, 839-010-0300, 839-010-0305, 839-010-0310

#### REPEAL:

#### RENUMBER:

#### AMEND AND RENUMBER:

#### Statutory Authority:

ORS 441.178; 652.355; 653.060; 659A.221; 659A.805

#### Other Authority:

#### Statutes Implemented:

ORS 441.172; 441.174; 441.178; 260.262; 652.355; 653.060; 659A.199; 659A.200-.233; OL Ch. 519, Sec.7 2013

### RULE SUMMARY

Amendments to clarify, conform with authorities, correct citations.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

#### PORTLAND

800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

#### SALEM

3865 Wolverine St. NE, E-1  
Salem, OR 97305-1268  
(503) 378-3292  
Fax (503) 373-7636

#### EUGENE

1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
Fax (541) 686-7980

#### BEND

Apprenticeship and Training  
Worksource Bend  
1645 NE Forbes Rd, Ste 106  
Bend, OR 97701-4990  
(541) 322-2435  
Fax (541) 389-8265

Oregon Relay TTY:711

#### MEDFORD

Apprenticeship and Training  
119 N Oakdale Ave.  
Medford, OR 97501-2629  
(541) 776-6201  
Fax (541) 776-6284

[www.oregon.gov/boli](http://www.oregon.gov/boli)

AN EQUAL OPPORTUNITY EMPLOYER

NPRM & Fiscal Impact for 1/22/15 missing



Bureau of Labor and Industries

# Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-010-0300

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

no

Amended:

BLI 2-2015, f. & cert. ef. 1-28-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

BOLI100

Effective: (Rev. 8/18)

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on December 30, 2013 by the

Bureau of Labor and Industries		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232	971-673-0784
Rules Coordinator	Address	Telephone

to become effective upon filing. Rulemaking Notice was published in the November 2013, *Oregon Bulletin*.

**RULE CAPTION**

Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
ADOPT: 839-010-0300, 839-010-0305, 839-010-0310

AMEND: 839-010-0000

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: S.B. 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.

*Marcia Ohlemiller*

Marcia Ohlemiller

12-30-13

Authorized Signer

Printed name

Date

Note: Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month's *Oregon Bulletin* and online *OAR Compilation* updates.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Ste. 1045 Portland, OR 97232 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION** Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-010-0300, 839-010-0305, 839-010-0310

**AMEND:** 839-010-0000 and any other Division 10 rules as necessary.

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS S.B. 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed Amendments would clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules would implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.l.ohlemiller@state.or.us

Marcia Ohlemiller

10/15/13

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment and Adoption of Rules in 839-010 to Implement Whistleblower Protection for Reporting Possible Violations of Election Laws

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: S.B. 148, 77th Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Amendments clarify the scope and purpose of the rules in correctly stating the provisions of the ORS enforced by the Bureau of Labor and Industries. New rules 839-010-0300, 839-010-0305, 839-010-0310 implement newly enacted legislation.

Documents Relied Upon, and where they are available:

Senate Bill 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Masures/list/>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The newly enacted law that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(F)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates there are 107,103 small businesses in Oregon. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would implement statutory protections which BOLI has no discretion not to enforce or to change.

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

## PERMANENT ADMINISTRATIVE RULES

**FILED**  
1-28-15 12:48 PM  
Val Itoyle  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division Marcia Ohlemiller Administrative Rules Chapter Number (971) 673-0784  
Rules Coordinator Telephone  
800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the A Oregon Bulletin. *Oct. 1, 2014 2/4/15 MD*

### RULE CAPTION

Amendments to clarify, conform with authorities, correct citations.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-010-0000, 839-010-0010, 839-010-0020, 839-010-0100, 839-010-0200, 839-010-0205, 839-010-0210, 839-010-0300, 839-010-0305, 839-010-0310

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 441.178; 652.355; 653.080; 659A.221; 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 441.172; 441.174; 441.178; 260.262; 652.355; 653.060; 659A.199; 659A.200-.233; OL Ch. 519, Sec.7 2013

### RULE SUMMARY

Amendments to clarify, conform with authorities, correct citations.

Marcia Ohlemiller

Marcia.L. Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

#### PORTLAND

800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

#### SALEM

3865 Wolverine St. NE; E-1  
Salem, OR 97305-1268  
(503) 378-3292  
Fax (503) 373-7636

#### EUGENE

1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
Fax (541) 686-7980

#### BEND

Apprenticeship and Training  
Worksource Bend  
1645 NE Forbes Rd, Ste 106  
Bend, OR 97701-4990  
(541) 322-2435  
Fax (541) 389-8265

Oregon Relay TTY:711

#### MEDFORD

Apprenticeship and Training  
119 N Oakdale Ave.  
Medford, OR 97501-2629  
(541) 776-6201  
Fax (541) 776-6284

[www.oregon.gov/boli](http://www.oregon.gov/boli)

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NDRM & Fiscal Impact for 1/28/15 missing



Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0075

Date Rule Became Effective: January 1, 2012

Date Review Due: January 1, 2017

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking? \_\_\_ Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?  
Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

BLI 3-2012, f. & cert. ef. 2-8-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

**Attach to this Review:** Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

**Required Filing/Copies:**

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

RECEIVED

FEB 22 2012

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

CIVIL RIGHTS DIVISION  
PORTLAND OFFICE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 7, 2012 by the

Bureau of Labor and Industries

Date prior to or same as filing date  
839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 8, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0075, 839-005-0130, 839-005-0135, ~~839-009-0364~~

*MSM FEB 20*

AMEND: 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, ~~839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365~~

RENUMBER: 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.



Stats. Implemented: HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

*B. Avakian*

Brad Avakian

February 7, 2012

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

**CORRECTED**  
Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

<u>Bureau of Labor and Industries</u>	839
Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	(971) 673-0784
Rules Coordinator	Telephone
<u>Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 **839-005-0075**

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>Last Day (m/d/yyyy) and Time for public comment</u>	<u>Printed Name</u>	<u>Email Address</u>	<u>Date Filed</u>
12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10p.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>	<u>11-10-11 1:10p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0180, 839-005-0170, 839-005-0200, 839-005-0208

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2668, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.138, 695A.142, 695A.199, 695A.230, 695A.233, 695A.238, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to interns.

Amendments to 839-005-0208 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.



Amendments to 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Law citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0180 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0180 and 839-005-0170 implement newly enacted legislation.

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Marla Ohlemiller

Marla.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>	<b>839</b>
<b>Agency and Division</b>	<b>Administrative Rules Chapter Number</b>
<b>Marcia Ohlemiller</b>	<b>800 NE Oregon St. Ste. 1045 Portland, OR 97232</b>
<b>Rules Coordinator</b>	<b>971-673-0784</b>
	<b>Address Telephone</b>

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT: 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325**  
**839-005-0400**

**AMEND: 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206** and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

**Stat. Auth.: ORS 659A.805**

**Other Auth.:**

**Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320**

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

**Bureau of Labor and Industries**

**839**

**Agency and Division**

**Administrative Rules Chapter Number**

**Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints**

**Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)**

**In the Matter of:**

**Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints**

**Statutory Authority: ORS 659A.805**

**Other Authority:**

**Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320**

**Need for the Rule(s):**

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

**Documents Relied Upon, and where they are available:**

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olls.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olls.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

**Fiscal and Economic Impact:**

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

**Statement of Cost of Compliance:**

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0136, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0315

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

BOLI100

Effective: (Rev. 8/18)



- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1046, Portland, OR 97232</u>	

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-006-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0076, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2689, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 9263, 77th Leg., Reg. Session (Or. 2013), ORS 346.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.238, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0080, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0086 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>839</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	<u>(971) 673-0784</u>

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address



NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0400

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

no

Amended:

BLI 18-2015, f. 12-22-15, cert. ef. 1-1-16

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	971-673-0784
800 NE Oregon St. Ste. 1045 Portland, OR 97232	
Rules Coordinator	Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlertiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone

800 NE Oregon St., Ste. 1046, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0080, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**  
ORS 659A.805

**Other Authority:**

**Statutes Implemented:**  
ORS chapter 659A, H.B. 2689, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.



Amendments to 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0090 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
9-15-14 6:36 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Bureau of Labor and Industries  
Agency and Division  
Marcia Ohlemiller  
Rules Coordinator  
Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

839  
Administrative Rules Chapter Number  
(971) 673-0784  
Telephone

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-xxxx regarding discrimination based on employment status under ORS 659A.550.

**AMEND:**

839-003-0005, 0010, 0020, 0025, 0031, 0040, 0045, 0050, 0055, 0060, 0065, 0070, 0080, 0085, 0090, 0095, 0100, 0200, 0215, 0220, 0225, 0235 and such other Division 3 rules as may be necessary.

839-004-0001, 0004, 0011, 0016, 0021 and such other Division 4 rules as may be necessary.

839-005-0000, 0003, 0005, 0026, 0031, 0075, 0195, 0200, 0205, 0206, 0210, 0305, ~~0400~~ and such other Division 5 rules as may be necessary.

839-006-9435, 1030 and such other Division 6 rules as may be necessary.

839-009-0210, 0230, 0240, 0250, 0260, 0270, 0330, 0340, 0370, 0380, 0390 and such other Division 9 Rules as may be necessary.

839-010-0100 and such other Division 10 rules as may be necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.061, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify procedure for housing discrimination settlements; replace "complainant" with "aggrieved person" in conformance with statute, replace "OSEA" with the statutory cite for the Oregon Safe Employment Act; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring; clarifying when an injured worker's former position still exists; clarifications under OFLA about sick child leave, bereavement leave, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing "calendar" references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

*Final  
Message*

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

<u>12-03-2014 5:00 p.m.</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking accompanies this form

**FILED**  
8-15-14 6:36 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Bureau of Labor and Industries  
Agency and Division

839  
Administrative Rules Chapter Number

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to OAR 839 Divisions 3, 4, 5, 6, 9 and 10 and Adoption of 839-005-xxxx to implement ORS 659A.550.

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.061, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**Need for the Rule(s):**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify procedure for housing discrimination settlements; replace "complainant" with "aggrieved person" in conformance with statute, replace "OSEA" with the statutory cite for the Oregon Safe Employment Act; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring; clarifying when an injured worker's former position still exists; clarifications under OFLA about sick child leave, bereavement leave, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing "calendar" references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

**Documents Relied Upon, and where they are available:**

None

**Fiscal and Economic Impact:**

None anticipated.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

None anticipated.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

All businesses in Oregon with one or more employees are subject to many of the rules; however the amendments are within current statutes and do not add requirements not already in statute.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

None anticipated.

**c. Equipment, supplies, labor and increased administration required for compliance:**

None anticipated.

**How were small businesses involved in the development of this rule?**

Small businesses are well represented on our rules notice list. We also plan to invite them specifically to comment on the rule amendments.

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

We will convene a rules advisory committee for purposes of asking for their input on these rule amendments.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 851.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 346.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Amendment Missing

BL 18-2015 L. 12-22-15 cert. 1-1-16

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-003-0031

Date Rule Became Effective: August 2012

Date Review Due: August 2017

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 9-2015, f. & cert. ef. 6-29-15

BLI 13-2013, f. & cert. ef. 12-30-13

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

BOLI100

Effective: (Rev. 8/18)



- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

<b>Bureau of Labor and Industries</b>	<b>839</b>
Agency and Division	Administrative Rules Chapter Number
<b>Marcia Ohlemiller</b>	<b>(971) 673-0784</b>
Rules Coordinator	Telephone
<b>Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232</b>	
Address	

**RULE CAPTION**

**Proposed rules clarifying that complaints under ORS 654.062 need not be notarized written complaints.**

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-003-0031

**AMEND:**

839-003-0005, 839-003-0025, 839-003-0200

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

659A.820

**Statutes Implemented:**

ORS 654.062 & 659A

**RULE SUMMARY**

Current rules require that complaints filed under the Oregon Safe Employment Act (OSEA) contain a notarized signature of the complainant. BOLI investigates retaliation complaints filed under OSEA statutes pursuant to a contract with Oregon OSHA. The federal Occupational Safety and Health Administration (OSHA) and Oregon OSHA have expressed concern that requirement of a notarized complaint is a barrier to timely investigations of matters involving threats to workplace safety, and have asked that BOLI clarify that complaints filed under ORS 654.062 do not require notarization.

The proposed rules are required in order for the complaint requirements to be consistent with OSEA statutes.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<b>08-06-2012</b> Close of Business Day (m/d/yyyy) and Time for public comment	<b>Marcia Ohlemiller</b> Printed Name	<b>Marcia.L.Ohlemiller@state.or.us</b> Email Address	<b>6-14-12 8:30a.m.</b> Date Filed
--	--	---	---------------------------------------

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Proposed rules clarifying that complaints under ORS 654.062 need not be notarized written complaints.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

New and amended rule language to conform complaint procedures with the Oregon Safe Employment Act.

Statutory Authority:

ORS 659A.805

Other Authority:

659A.820

Stats. Implemented:

ORS 654.062 & 659A

Need for the Rule(s):

The temporary rules will revise rules stating that complaints filed under OSEA are required to contain the notarized signature of the complainant. The temporary rules will remove language indicating that complaints filed under OSEA must be filed with a notarized signature from the complainant. This distinction is necessary to permit complainants to file a complaint under OSEA within the 90 days required by statute without obtaining a notarized signature.

Documents Relied Upon, and where they are available:

ORS 654.062, available in ORS publications.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed rules and amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

State agencies and units of local government will be subject to rules implementing ORS 654.062 and chapter 659A. Fiscal or economic impact would result from those laws, and not the proposed rulemaking. A positive impact is anticipated for the public, expanding protections for employees who file complaints of retaliation based on health or safety complaints.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated because the proposed changes implement provisions of existing law.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

How were small businesses involved in the development of this rule?

Not, why?:

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No

The proposed rule amendments and adoptions would implement statutory specifications over which BOLI has no discretion.

08-06-2012 Close of Business

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

6-14-12 8:30 AM

Last Day (m/d/yyyy) and Time  
Public comment

Printed Name

Email Address

Date Filed

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on August 8, 2012 by the  
Bureau of Labor and Industries. Date prior to or same as filing date  
839

Agency and Division	Administrative Rules Chapter Number
Marcia L. Ohlemiller      800 NE Oregon Street, Suite 1045, Portland, OR 97232	971-673-0784
Rules Coordinator	Address
	Telephone

to become effective August 8, 2012.      Rulemaking Notice was published in the July 2012 Oregon Bulletin.\*\*

**RULE CAPTION**

Permanent rules clarifying that complaints under ORS 654.062 need not be notarized written complaints.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-003-0031

**AMEND:**

839-003-0005, 839-003-0025, 839-003-0200


Stat. Auth.: ORS 659A.805

Other Auth.: ORS 659A.820

Stats. Implemented: ORS 654.062 & 659A

**RULE SUMMARY**

Previous rules required that complaints filed under the Oregon Safe Employment Act (OSEA) contain a notarized signature of the complainant. BOLI investigates retaliation complaints filed under OSEA statutes pursuant to a contract with Oregon OSHA. The federal Occupational Safety and Health Administration (OSHA) and Oregon OSHA have expressed concern that requirement of a notarized complaint is a barrier to timely investigations of matters involving threats to workplace safety, and have asked that BOLI clarify that complaints filed under ORS 654.062 do not require notarization. The proposed rules are required in order for the complaint requirements to be consistent with OSEA statutes.

	Brad Avakian	8/7/12
Authorized Signer	Printed name	Date

With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

Amendment cert. of. 12/30/13 missing



# Oregon

Bureau of Labor and Industries

Brad Avakian  
Commissioner

July 1, 2015

Dear Legislative Counsel:

On June 29, 2015, BOLI filed permanent amendments to Division 3 Civil Rights Division rules, "Civil Rights Complaint Procedures." A copy of the filing was sent to Legislative Counsel.

After filing the rules with the Secretary of State, upon review, it was discovered that a rule section that had been added is does not accurately reflect CRD's processes. On June 30, 2015, the Secretary of State accepted a corrected rule as follows:

**839-003-0031**

**Filing a Complaint [U]nder the Oregon Safe Employment Act (OSEA)  
[(3) Within 90 days after receipt of a complaint of discrimination or retaliation for  
opposing unsafe or unhealthy work conditions under ORS 654.062, the division will  
notify the aggrieved person of the commissioner's determination.]**

With this letter, please find the corrected rules. Two copies of the Certificate, which did not need to be amended, plus a self-addressed envelope, are enclosed.

This correction did not change the filing date of the Division 3 permanent rule amendments, which is June 29, 2015.

Thank you for your attention to this matter.

My apologies for the error.

Sincerely,

Marcia Ohlemiller  
Rules Coordinator  
BOLI

**PORTLAND**  
800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

**SALEM**  
3865 Wolverine St. NE; B-1  
Salem, OR 97305-1268  
(503) 378-3292  
FAX (503) 373-7636

**EUGENE**  
1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
FAX (541) 686-7980

**BEND**  
Apprenticeship and Training  
Worksource Bend  
1645 NE Forbes Rd, Ste 106  
Bend, OR 97701-4990  
(541) 322-2435  
FAX (541) 389-8265

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FAX (541) 776-6284



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
6-29-15 7:18 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

839-003-0000, 839-003-0005, 839-003-0010, 839-003-0015, 839-003-0020, 839-003-0025, 839-003-0031, 839-003-0040, 839-003-0045, 839-003-0050, 839-003-0055, 839-003-0060, 839-003-0065, 839-003-0070, 839-003-0080, 839-003-0085, 839-003-0090, 839-003-0095, 839-003-0100, 839-003-0200, 839-003-0205, 839-003-0210, 839-003-0215, 839-003-0220, 839-003-0225, 839-003-0230, 839-003-0235, 839-003-0240, 839-003-0245

**REPEAL:**

**NUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 659A.093; 651.061; 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, ORS 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to clarify, conform with authorities, correct citations. Clarify procedure for unlawful practice settlements, replace "complainant" with "aggrieved person" to conform with statute, add citations to federal housing laws, clarify enforcement of settlement agreements and commissioner orders through civil actions, replace references to "OSEA" with citation to Oregon Safe Employment Act, clarify statutes of limitations in certain types of civil rights cases that are different from the usual deadlines, clarify that settlement discussions and documents are exempt from disclosure. Edits to and rearrangements within rules to integrate chronology of processes and make them more understandable to the reader.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
9-15-14 6:38 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Bureau of Labor and Industries  
Agency and Division  
Marcia Ohlemiller  
Rules Coordinator  
Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

839  
Administrative Rules Chapter Number  
(971) 673-0784  
Telephone

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-xxxx regarding discrimination based on employment status under ORS 659A.550.

**AMEND:**

839-003-0005, 0010, 0020, 0025, 0031, 0040, 0045, 0050, 0055, 0060, 0065, 0070, 0080, 0085, 0090, 0095, 0100, 0200, 0215, 0220, 0225, 0235 and such other Division 3 rules as may be necessary.

839-004-0001, 0004, 0011, 0016, 0021 and such other Division 4 rules as may be necessary.

839-005-0000, 0003, 0005, 0026, 0031, 0075, 0195, 0200, 0205, 0206, 0210, 0305, 0400 and such other Division 5 rules as may be necessary.

839-006-9435, 1030 and such other Division 6 rules as may be necessary.

839-009-0210, 0230, 0240, 0250, 0260, 0270, 0330, 0340, 0370, 0380, 0390 and such other Division 9 Rules as may be necessary.

839-010-0100 and such other Division 10 rules as may be necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.051, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify procedure for housing discrimination settlements; replace "complainant" with "aggrieved person" in conformance with statute, replace "OSEA" with the statutory cite for the Oregon Safe Employment Act; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring; clarifying when an injured worker's former position still exists; clarifications under OFLA about sick child leave, bereavement leave, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing "calendar" references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

*Permanent Missing*

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

<u>12-03-2014 5:00 p.m.</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Completion.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking accompanies this form.

**FILED**  
9-15-14 6:36 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Bureau of Labor and Industries  
Agency and Division

839  
Administrative Rules Chapter Number

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to OAR 839 Divisions 3, 4, 5, 6, 9 and 10 and Adoption of 839-005-xxxx to implement ORS 659A.550.

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.061, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.082, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**Need for the Rule(s):**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify procedure for housing discrimination settlements; replace "complainant" with "aggrieved person" in conformance with statute, replace "OSEA" with the statutory cite for the Oregon Safe Employment Act; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring; clarifying when an injured worker's former position still exists; clarifications under OFLA about sick child leave, bereavement leave, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing "calendar" references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

**Documents Relied Upon, and where they are available:**

None

**Fiscal and Economic Impact:**

None anticipated.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

None anticipated.

**2. Cost of compliance effect on small business (ORS 183.338):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

All businesses in Oregon with one or more employees are subject to many of the rules; however the amendments are within current statutes and do not add requirements not already in statute.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

None anticipated.

**c. Equipment, supplies, labor and increased administration required for compliance:**

None anticipated.

**How were small businesses involved in the development of this rule?**

Small businesses are well represented on our rules notice list. We also plan to invite them specifically to comment on the rule amendments.

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

We will convene a rules advisory committee for purposes of asking for their input on these rule amendments.

Bureau of Labor and Industries

# Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-006-0345

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 12-2015, f. & cert. ef. 8-28-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

BOLI100

Effective: (Rev. 8/18)

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-006-0291, 839-006-0292, 839-006-0345

**AMEND:**

839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305

**REPEAL:**

**RENUMBER:**

839-006-0332 to 839-006-0350

**AMEND AND RENUMBER:**

839-006-0307 to 839-006-0240 <sup>0240</sup> 4/14/13

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 659A.103 & 659A.142; H.B. 2111, 77th Leg., Reg. Session (Or. 2013); H.B. 2866, 77th Leg., Reg. Session (Or. 2013); S.B. 610, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-006-0205 and 839-006-0212 make the rules consistent with newly enacted legislation regarding substantial limitations.

Amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Amendments to 839-006-0290 implement newly enacted legislation regarding places of public accommodation and state government.

Amendments to 839-006-0305 modify the definition of place of public accommodation consistent with newly enacted legislation.

Amendments and renumbering of 839-006-0307 to 839-006-0340 reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities.

Adoption of 839-006-0345 provides information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

Renumbering of 839-006-0332 to 839-006-0350 moves the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

**FILED**  
12-30-13 5:40 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839

Administrative Rules Chapter Number

Marcia Ohlemiller  
Rules Coordinator

800 NE Oregon St. Ste. 1045 Portland, OR 97232

Address

971-673-0784

Telephone

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-006-0291, 839-006-0292, 839-006-0345

**AMEND:** 839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305, and any other Division 6 rules as necessary.

**REPEAL:**

**RENUMBER:** 839-006-0332 to 839-006-0350;

**AMEND & RENUMBER:** 839-006-0307 to 839-006-0340

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-006-0205 and 839-006-0212 would make the rules consistent with newly enacted legislation regarding substantial limitations.

Proposed amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 would provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Proposed amendments to 839-006-0290 would implement newly enacted legislation regarding places of public accommodation and state government.

Proposed amendments to 839-006-0305 would modify the definition of place of public accommodation consistent with newly enacted legislation.

Proposed amendments to and renumbering of 839-006-0307 to 839-006-0340 would reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The proposed amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities

The proposed adoption of 839-006-0345 will provide information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

The proposed renumbering of 839-006-0332 to 839-006-0350, will move the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.



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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Proposed amendments and adoptions would make the rules consistent with newly enacted legislation and the Americans with Disabilities Act. Adoptions of 839-006-0291, 839-006-0292, and 839-006-0345 would implement newly enacted legislation or clarify responsibilities under existing legislation.

Documents Relied Upon, and where they are available:

H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/TB2111/Enrolled>.  
H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/TB2668/Enrolled>.  
S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/SB610/Enrolled>.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(F)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or make the rules consistent with newly enacted legislation which BOLI has no authority not to enforce or to change.

Marcia.l.ohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Amendment 8/28/15 missing

" minimal changes "

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0320

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking? \_\_\_ Yes X No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

no

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

5) What impacts has the rule had on small business?

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>	<b>839</b>
Agency and Division	Administrative Rules Chapter Number
<b>Marcia Ohlemiller</b>	<b>800 NE Oregon St. Ste. 1045 Portland, OR 97232</b>
Rules Coordinator	Address Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT: 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325**  
**839-005-0400**

**AMEND: 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206** and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: **ORS 659A.805**

Other Auth.:

Stats. Implemented: **ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320**

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under **ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315** to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with **ORS 659A.320**, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlmaniller*

Marcia Ohlmaniller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.



Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0080, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0100, 839-005-0170, 839-005-0200, 839-005-0208

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2689, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3283, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.138, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to Interns.

Amendments to 839-005-0208 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

            
Marcia Ohlemiller  
Rules Coordinator Name

            
Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

839  
(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0208, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

# Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0310

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

No known impact

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

BOLI100

Effective: (Rev. 8/18)

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>	<b>839</b>
<b>Agency and Division</b>	<b>Administrative Rules Chapter Number</b>
<b>Marla Ohlemiller</b>	<b>971-673-0784</b>
<b>800 NE Oregon St. Ste. 1045 Portland, OR 97232</b>	
<b>Rules Coordinator</b>	<b>Telephone</b>
<b>Address</b>	

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1046, Portland, OR 97232

Address

To become effective Upon filing. Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0080, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0180, 839-005-0170, 839-005-0200, 839-005-0208

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 349.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
**Bureau of Labor and Industries**

Agency and Division	Administrative Rules Chapter Number
<b>Marcia Ohlemiller</b>	<b>839</b>
Rules Coordinator	Telephone
<b>800 NE Oregon St., Ste. 1045, Portland, OR 97232</b>	<b>(971) 673-0784</b>

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.806; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 346.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address

NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15



Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0300

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

BOLI100

Effective: (Rev. 8/18)

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St, Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: **ORS 659A.805**

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1046, Portland, OR 97232</u>	

Address

To become effective Upon filing. Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0050, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.062, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

            
Marcia Ohlemiller  
Rules Coordinator Name

            
Marcia.L.Ohlemiller@state.or.us  
Email Address

<p><b>FILED</b> 12-30-13 3:47 PM ARCHIVES DIVISION SECRETARY OF STATE</p>
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Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

839  
(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.051

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BLI 11-2015 8-4-15

## Five Year Rule Review Report

ORS 183.405 requires the hureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0325

Date Rule Became Effective: \_12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking? \_\_\_\_ Yes X No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Nccd and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 9-2016, f. & cert. ef. 11-8-16

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

Non known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

<b>Bureau of Labor and Industries</b>	<b>839</b>
<b>Agency and Division</b>	<b>Administrative Rules Chapter Number</b>
<b>Marcia Ohlemiller</b>	<b>800 NE Oregon St. Ste. 1045 Portland, OR 97232</b>
<b>Rules Coordinator</b>	<b>971-673-0784</b>
	<b>Address Telephone</b>

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

**AMEND:** 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

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Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

<i>Marcia Ohlemiller</i>	Marcia Ohlemiller	10/15/2013
Signature	Printed name	Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries  
Agency and Division

839

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with "aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>

H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(B)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0030, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0160, 839-005-0170, 839-005-0200, 839-005-0206

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3283, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.238, 695A.290, 695A.300, 695A.303, 695A.308, and 695A.315 to interns.

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Amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**

12-30-13 3:47 PM

ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

*Amendment Missing*

*BLI 9-2016*

*11-8-16*

*changed statutory reference*

**839-005-0325**

**Discrimination by Career Schools: Retaliation or Discrimination**

Pursuant to, ORS 659.852(1)(b), it is an unlawful practice for a career school or its agent to retaliate or discriminate against any individual because the individual has in good faith reported information that the student believes is evidence of a violation of a state or federal law, rule or regulation.

**Statutory/Other Authority:** ORS 651.060

**Statutes/Other Implemented:** ORS 345.240 & 659.850

**History:**

BLI 9-2016, f. & cert. ef. 11-8-16

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 14-2013, f. & cert. ef. 12-30-13

**659.852 Retaliation against student prohibited.** (1) As used in this section:

(a) "Education program" means an education program provided by:

- (A) A school district;
- (B) A public charter school;
- (C) An education service district;
- (D) A long term care or treatment facility, as described in ORS 343.961;
- (E) The Youth Corrections Education Program;
- (F) The Oregon School for the Deaf;
- (G) A community college operated under ORS chapter 341;
- (H) A public university listed in ORS 352.002;
- (I) A career school;
- (J) A private school; or
- (K) A private college or university.

(b) "Retaliation" means suspension, expulsion, disenrollment, grade reduction, denial of academic or employment opportunities, exclusion from academic or extracurricular activities, denial of access to transcripts, threats, harassment or other adverse action that substantially disadvantages a student in academic, employment or extracurricular activities.

(2) A student of an education program may not be subjected to retaliation by an education program for the reason that the student has in good faith reported information that the student believes is evidence of a violation of a state or federal law, rule or regulation.

(3) A student, or a parent or guardian of a student under 18 years of age, who alleges a violation of subsection (2) of this section may bring a civil action under ORS 659A.885. [2015 c.434 §2]

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0130

Date Rule Became Effective: January 1, 2012

Date Review Due: January 1, 2017

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 3-2012, f. & cert. ef. 2-8-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

RECEIVED

FEB 22 2012

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

CIVIL RIGHTS DIVISION  
PORTLAND OFFICE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 7, 2012 by the

Bureau of Labor and Industries

Date prior to or same as filing date  
839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 8, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0075, 839-005-0130, 839-005-0135, ~~839-009-0364~~

*MM FEB. 20*

AMEND: 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

RENUMBER: 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.



Stats. Implemented: HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

*B. Avakian*

Brad Avakian

February 7, 2012

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005



**CORRECTED**

Secretary of State

**NOTICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 **839-005-0075**

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-008-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.108 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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.

<u>Last Day (m/d/yyyy) and Time</u> for public comment	<u>Printed Name</u>	<u>Email Address</u>	<u>Date Filed</u>
12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10p.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

<u>Bureau of Labor and Industries</u>	839
Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	(971) 673-0784
Rules Coordinator	Telephone
<u>Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>12-30-2011 Close of Business</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>	<u>11-10-11 1:10p.m.</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address	Date Filed

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries

Agency and Division Marcia Ohlemiller Administrative Rules Chapter Number 839  
Rules Coordinator 800 NE Oregon St., Ste. 1045, Portland, OR 97232 Telephone (971) 673-0784  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0208, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.081

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: OAR 839-005-0135

Date Rule Became Effective: January 1, 2012

Date Review Due: January 1, 2017

Bureau Division or Unit: Civil Rights Division

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

BLI 3-2012, f. & cert. ef. 2-8-12

4) Is the rule still needed?

Yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

BOLI100

Effective: (Rev. 8/18)

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.



RECEIVED

FEB 22 2012

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

CIVIL RIGHTS DIVISION  
PORTLAND OFFICE

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 7, 2012 by the

Bureau of Labor and Industries

Date prior to or same as filing date  
839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Suite 1045, Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

to become effective February 8, 2012. Rulemaking Notice was published in the November 2011 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 839-005-0075, 839-005-0130, 839-005-0135, ~~839-009-0364~~

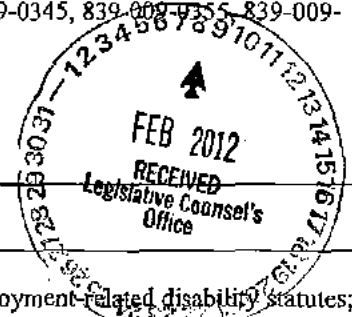
*MSM FEB 20*

AMEND: 839-005-0160, 839-005-0170, 839-009-0325, 839-009-0330, 839-009-0340, 839-009-0345, 839-009-0355, 839-009-0360, 839-009-0362, 839-009-0365

RENUMBER: 839-005-0033 to 839-005-0125

Stat. Auth.: ORS 659A.805

Other Auth.: HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.



Stats. Implemented: HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), and HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The new rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment and clarifies exceptions to the prohibition on the use of credit history information in employment.

The new rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The new rules would implement provisions of HB 3482, adding harassment to crime victim protections.

*B. Avakian*

Brad Avakian

February 7, 2012

Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

**CORRECTED**

Secretary of State

**NOTICE OF PROPOSED RULEMAKING\***

A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364 **839-005-0075**

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a commercial, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>Last Day (m/d/yyyy) and Time for public comment</u>	<u>Printed Name</u>	<u>Email Address</u>	<u>Date Filed</u>
12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10p.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday. ARC 923-2003

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Conforms civil rights rules to provisions of HB 2036, HB 2828 and HB 3482 (2011).

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-0125; 839-005-0130; 839-005-0135; 839-005-0175; 839-009-0364

**AMEND:**

839-005-0033; 839-005-0060; 839-005-0065; 839-005-0070; 839-005-0080; 839-005-0085; 839-005-0160; 839-005-0170 and other Division 5 rules as necessary; 839-006-0200; 839-006-0202; 839-006-0205; 839-006-0206; 839-006-0212; 839-006-0240; 839-006-0242; 839-006-0244; 839-006-0250; 839-006-0255; 839-006-0265; 839-006-0270; 839-006-0275; 839-006-0280; 839-006-0290; 839-006-0295; 839-006-0300; 839-006-0305; 839-006-0307; 839-006-0310; 839-006-0320; 839-006-0330; 839-006-0332; 839-006-0335 and other Division 6 rules as necessary; 839-009-0325; 839-009-0330; 839-009-0335; 839-009-0340; 839-009-0345; 839-009-0350; 839-009-0355; 839-009-0360; 839-009-0362; 839-009-0363; 839-009-0365 and other Division 9 rules as necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

OAR 839-005-0033 to 839-005-0120 and Division 5 rules as necessary; Division 6 rules as necessary; Division 9 rules as necessary.

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

HB 2036, HB 2828, HB 3482, Oregon Legislative Assembly 2011.

**Statutes Implemented:**

HB 2036 (corrects references that relate to employment to refer only to employment-related disability statutes; allows BOLI to enforce law providing protected leave to attend a criminal proceeding; & clarifies that an employer may consider the credit history of applicants for public safety officer employment), HB 2828 (Creates unlawful employment practice if employer ceases to provide insurance during period employee is serving as juror), & HB 3482 (adds "harassment" to Crime Victim leave & discrimination provisions), Oregon Legislative Assembly 2011; ORS 659A.112 - 659A.139; ORS 659A.270 - 659A.290; ORS 659A.303; ORS 659A.855; ORS 659A.885.

**RULE SUMMARY**

The proposed rules would implement HB 2036, which 1) corrects references in ORS 659A.106 that relate to employment to refer only to employment-related disability statutes (ORS 659A.112-659A.139); 2) allows BOLI to enforce law providing protected leave to attend a criminal proceeding (ORS 659A.194(2)); and 3) clarifies that an employer may consider the credit history of applicants for public safety officer employment.

The proposed rules would implement provisions of HB 2828, creating an unlawful employment practice if an employer who employs 10 or more people ceases to provide health, disability, life or other insurance during a period in which the employee is serving or is scheduled to serve as juror and the employee notified the employer of election to have coverage continue.

The proposed rules would implement provisions of HB 3482, adding "harassment" to crime victim protections, and allows a state employee in an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual

an unclassified or exempt position, who is not a confidential, managerial or supervisory employee, to be accompanied by an individual selected by the victimized employee to be present during an interview between the employer and employee.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing. 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.

<u>Last Day (m/d/yyyy) and Time for public comment</u>	<u>Printed Name</u>	<u>Email Address</u>	<u>Date Filed</u>
12-30-2011 Close of Business	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us	11-10-11 1:10p.m.

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 923-2003

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the  
Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number  
Marcia Ohlemiller (971) 673-0784  
Rules Coordinator Telephone  
800 NE Oregon St., Ste. 1045, Portland, OR 97232  
Address

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0076, 839-005-0080, 839-005-0086, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0206, 839-005-0208, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-005-0305

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: \_\_\_\_\_

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking? \_\_\_ Yes X No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

Yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?  
Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

Amended:

BLI 11-2015, f. & cert. ef. 8-4-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

No known impact.

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.



**Required Filing/Copies:**

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries	839
Agency and Division	Administrative Rules Chapter Number
Marcla Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232
Rules Coordinator	971-673-0784
	Address Telephone
<b>RULE CAPTION</b>	
Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints	
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.	

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
ADOPT: 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325  
839-005-0400

AMEND: 839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0206 and other rules as necessary in chapter 839-005

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), H.B. 2654, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

**RULE SUMMARY**

Proposed amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Proposed amendments to 839-005-0003 would amend to implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.290, 695A.300, 695A.303, 695A.306, and 695A.315 to interns.

Proposed amendments to 839-005-0206 would make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Proposed adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 would address discrimination by Career Schools. These new rules will reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Proposed adoption 839-005-0400 would address unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Proposed amendments to 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 would replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

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

November 28, 2013

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

*Marcia Ohlemiller*

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2654, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 659A.320

Need for the Rule(s):

The amendments are necessary to make the rules internally consistent, to make the rules consistent with existing legislation, and to implement newly enacted legislation. Currently OARs, 839-005-0003, 839-005-0011 and 839-005-0030 include the term "complainant," not "aggrieved person." To clarify that the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons, the term "complainant" would be replaced as necessary with aggrieved person."

The bureau has long had statutory authority to enforce laws against discrimination by career schools. However, it had not adopted rules implementing the statutes. Proposed new rules 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320 and 839-005-0325 will provide standards for evaluating complaints under ORS 345.240.

Newly enacted legislation limits access to social media of employees by employers, and provides employment rights protections to interns. These new laws are implemented by OAR 839-005-0400 and 839-005-0003.

Documents Relied Upon, and where they are available:

H.B. 2669, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2669/Enrolled>  
H.B. 2654, 77th Leg., Reg. Session (Or. 2013) <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2654/Enrolled>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):  
No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:  
Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, no economic impact is anticipated.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:  
No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or would implement statutory provisions over which BOLI has no discretion.

*Marcia Ohlemiller*

Marcia Ohlemiller

October 15, 2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	

Address

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting 839-005 rules regarding career schools, social media, interns, substantial evidence, commissioner complaints

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**AMEND:**

839-005-0003, 839-005-0011, 839-005-0030, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0180, 839-005-0170, 839-005-0200, 839-005-0208

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, H.B. 2669, 77th Leg., Reg. Session (Or. 2013), H.B. 2854, 77th Leg., Reg. Session (Or. 2013), H.B. 2111, 77th Leg., Reg. Session (Or. 2013), H.B. 3263, 77th Leg., Reg. Session (Or. 2013), ORS 345.240, ORS 859A.320

**RULE SUMMARY**

Amendments to 839-005-0003, 839-005-0011, 839-005-0030 replace the term "complainant" with "aggrieved person" because the Commissioner and Attorney General may bring complaints on behalf of aggrieved persons

Amendments to 839-005-0003 implement newly enacted legislation extending employee protections under ORS 695A.030, 695A.082, 695A.109, 695A.112, 695A.136, 695A.142, 695A.199, 695A.230, 695A.233, 695A.236, 695A.280, 695A.300, 695A.303, 695A.308, and 695A.315 to interns.

Amendments to 839-005-0206 make the definition of substantial evidence in the Housing Discrimination section internally consistent and consistent with Federal laws and necessary elements for proving discrimination.

Adoptions of 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325 address discrimination by Career Schools. These new rules reference the statutes prohibiting unlawful discrimination by career schools which are enforced by BOLI and clarify the BOLI's standards and procedures.

Adoption of 839-005-0400 addresses unlawful employment practices by an employer related to employee's social media accounts to be consistent with newly enacted legislation.

Amendments to 839-005-0060, 839-005-0085, 839-005-0070, 839-005-0075, 839-005-0080 and 839-005-0085 replace the Oregon Laws citation with ORS 659A.320, the statutory citation for limitations on the lawful use of credit history in employment.

Amendments to 839-005-0200 change the definition of substantially limits consistent with newly enacted legislation.

Amendments to 839-005-0160 make the definition of Victim of Harassment consistent with definitions of Victim of Domestic Violence, Victim of Sexual Assault, and Victim of Stalking.

Amendments to 839-005-0160 and 839-005-0170 implement newly enacted legislation.

**FILED**  
12-30-13 3:47 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
9-15-14 6:38 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Bureau of Labor and Industries

Agency and Division

839

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations: adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

**ADOPT:**

839-005-xxxx regarding discrimination based on employment status under ORS 659A.550.

**AMEND:**

839-003-0005, 0010, 0020, 0025, 0031, 0040, 0045, 0050, 0055, 0060, 0065, 0070, 0080, 0085, 0090, 0095, 0100, 0200, 0215, 0220, 0225, 0235 and such other Division 3 rules as may be necessary.

839-004-0001, 0004, 0011, 0016, 0021 and such other Division 4 rules as may be necessary.

839-005-0000, 0003, 0005, 0026, 0031, 0075, 0195, 0200, 0205, 0206, 0210, ~~0305~~, 0400 and such other Division 5 rules as may be necessary.

839-006-9435, 1030 and such other Division 6 rules as may be necessary.

839-009-0210, 0230, 0240, 0250, 0260, 0270, 0330, 0340, 0370, 0380, 0390 and such other Division 9 Rules as may be necessary.

839-010-0100 and such other Division 10 rules as may be necessary.

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.061, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify procedure for housing discrimination settlements; replace "complainant" with "aggrieved person" in conformance with statute, replace "OSEA" with the statutory cite for the Oregon Safe Employment Act; conform career school rules by editing in new statutory definition for "agent," clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring; clarifying when an injured worker's former position still exists; clarifications under OFLA about sick child leave, bereavement leave, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing "calendar" references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

*Final  
Missing*



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

<u>12-03-2014 5:00 p.m.</u>	<u>Marcia Ohlemiller</u>	<u>Marcia.L.Ohlemiller@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking accompanies this form.

**FILED**  
9-15-14 6:36 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Bureau of Labor and Industries  
Agency and Division

839  
Administrative Rules Chapter Number

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendments to OAR 839 Divisions 3, 4, 5, 6, 9 and 10 and Adoption of 839-005-xxxx to implement ORS 659A.550.

**Statutory Authority:**

ORS 659A.805, 659A.093, 651.081, 654.062

**Other Authority:**

**Statutes Implemented:**

ORS chapter 659A, 192.440(3), 192.501(8), 654.062, 345.240, 345.010, 659.850, 408.230, 408.235, 653.060, 652.355

**Need for the Rule(s):**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to clarify procedure for housing discrimination settlements; replace "complainant" with "aggrieved person" in conformance with statute, replace "OSEA" with the statutory cite for the Oregon Safe Employment Act; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring; clarifying when an injured worker's former position still exists; clarifications under OFLA about sick child leave, bereavement leave, definition of marriage, spouse, definition of child, employee discipline for failure to give notice of OFLA leave, editing "calendar" references, clarifying OFLA provisions regarding employer payment of benefits, clarifying relationship between workers' compensation and OFLA with respect to employer relationship to employee, and other clarifications and edits based on current law. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

**Documents Relied Upon, and where they are available:**

None

**Fiscal and Economic Impact:**

None anticipated.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

None anticipated.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

All businesses in Oregon with one or more employees are subject to many of the rules; however the amendments are within current statutes and do not add requirements not already in statute.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

None anticipated.

**c. Equipment, supplies, labor and increased administration required for compliance:**

None anticipated.

**How were small businesses involved in the development of this rule?**

Small businesses are well represented on our rules notice list. We also plan to invite them specifically to comment on the rule amendments.

**Administrative Rule Advisory Committee consulted?: Yes**

**If not, why?:**

We will convene a rules advisory committee for purposes of asking for their input on these rule amendments.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

**FILED**  
8-4-15 5:51 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>839</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	<u>(971) 673-0784</u>
Address	

To become effective Upon filing, Rulemaking Notice was published in the October 2014 Oregon Bulletin.

**RULE CAPTION**

Amendments to clarify, conform with authorities, correct citations; adoption to implement new statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-005-0036

**AMEND:**

839-005-0000, 839-005-0003, 839-005-0005, 839-005-0010, 839-005-0011, 839-005-0013, 839-005-0014, 839-005-0021, 839-005-0026, 839-005-0030, 839-005-0031, 839-005-0060, 839-005-0065, 839-005-0070, 839-005-0075, 839-005-0080, 839-005-0085, 839-005-0130, 839-005-0135, 839-005-0138, 839-005-0140, 839-005-0160, 839-005-0170, 839-005-0195, 839-005-0200, 839-005-0205, 839-005-0206, 839-005-0210, 839-005-0215, 839-005-0220, 839-005-0300, 839-005-0305, 839-005-0310, 839-005-0315, 839-005-0320, 839-005-0325, 839-005-0400

**REPEAL:**

**RENUMBER:**

**AMEND AND RENUMBER:**

**Statutory Authority:**

ORS 659A.805; 651.061

**Other Authority:**

**Statutes Implemented:**

ORS 659A.550; ORS 345.240; ORS 345.010; ORS 659.850

**RULE SUMMARY**

Amendments to rules to clarify, conform with authorities, correct citations. The purposes of the amendments are to replace "complainant" with "aggrieved person" in conformance with statute; conform career school rules by editing in new statutory definition for "agent;" clarify that veteran preference voluntary hiring by private employer does not preclude discrimination complaint regarding hiring. Adoption of rule to implement ORS 659A.550, discrimination based on employment status.

Marcia Ohlemiller

Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us

Email Address

NPRM & Fiscal Impact missing

BCI 11-2015 8-4-15

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-010-0310

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

no

Amended:

BLI 2-2015, f. & cert. ef. 1-28-15

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

BOLI100

Effective: (Rev. 8/18)

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on December 30, 2013 by the

Bureau of Labor and Industries		839
Agency and Division		Administrative Rules Chapter Number
Marcia Ohlemiller	800 NE Oregon St. Ste. 1045 Portland, OR 97232	971-673-0784
Rules Coordinator	Address	Telephone

to become effective upon filing. Rulemaking Notice was published in the November 2013, *Oregon Bulletin*.

**RULE CAPTION**

Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws  
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.  
ADOPT: 839-010-0300, 839-010-0305, 839-010-0310

AMEND: 839-010-0000

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: S.B. 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.

*Marcia Ohlemiller*

Marcia Ohlemiller

12-30-13

Authorized Signer

Printed name

Date

Note: Permanent rulemakings must be submitted by the 15th day of the month to be included in the next month's *Oregon Bulletin* and online OAR Compilation updates.

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries 839  
Agency and Division Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. Ste. 1045 Portland, OR 97232 971-673-0784  
Rules Coordinator Address Telephone

**RULE CAPTION** Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-010-0300, 839-010-0305, 839-010-0310

**AMEND:** 839-010-0000 and any other Division 10 rules as necessary.

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS S.B. 148, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed Amendments would clarify the purpose and scope of the rules in correctly stating the provisions of the Oregon Revised Statutes that are enforced. Newly adopted rules would implement newly enacted legislation extending whistleblower protections to disclosures regarding violations of election laws.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.J.ohlemiller@state.or.us

Marcia Ohlemiller

10/15/13

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.



**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending and adopting rules to implement newly enacted whistleblower protection regarding election laws

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment and Adoption of Rules in 839-010 to Implement Whistleblower Protection for Reporting Possible Violations of Election Laws

Statutory Authority: ORS 659A.805

Other Authority:

Stats. Implemented: S.B. 148, 77th Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Amendments clarify the scope and purpose of the rules in correctly stating the provisions of the ORS enforced by the Bureau of Labor and Industries. New rules 839-010-0300, 839-010-0305, 839-010-0310 implement newly enacted legislation.

Documents Relied Upon, and where they are available:

Senate Bill 148, 77th Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013RI/Measures/list/>

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The newly enacted law that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(F)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates there are 107,103 small businesses in Oregon. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would implement statutory protections which BOLI has no discretion not to enforce or to change.

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



# Oregon

Secretary of State  
Certificate and Order for Filing

Bureau of Labor and Industries

## PERMANENT ADMINISTRATIVE RULES

**FILED**  
1-28-15 12:46 PM  
Val Hoyle  
ARCHIVES DIVISION  
Commissioner  
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the Bureau of Labor and Industries 839

Agency and Division Marcia Ohlemiller Administrative Rules Chapter Number (971) 673-0784

Rules Coordinator 800 NE Oregon St., Ste. 1045, Portland, OR 97232 Telephone

Address 800 NE Oregon St., Ste. 1045, Portland, OR 97232

To become effective Upon filing, Rulemaking Notice was published in the Oregon Bulletin. *Oct. 1, 2014 2/4/15 MD*



### RULE CAPTION

Amendments to clarify, conform with authorities, correct citations.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

### RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

#### ADOPT:

#### AMEND:

839-010-0000, 839-010-0010, 839-010-0020, 839-010-0100, 839-010-0200, 839-010-0205, 839-010-0210, 839-010-0300, 839-010-0305, 839-010-0310

#### REPEAL:

#### RENUMBER:

#### AMEND AND RENUMBER:

#### Statutory Authority:

ORS 441.178; 652.355; 653.060; 659A.221; 659A.805

#### Other Authority:

#### Statutes Implemented:

ORS 441.172; 441.174; 441.178; 260.262; 652.355; 653.060; 659A.199; 659A.200-233; OL Ch. 519, Sec.7 2013

### RULE SUMMARY

Amendments to clarify, conform with authorities, correct citations.

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address

#### PORTLAND

800 NE Oregon St. Suite 1045  
Portland, OR 97232-2180  
(971) 673-0761  
Fax (971) 673-0762

#### SALEM

3865 Wolverine St. NE; E-1  
Salem, OR 97305-1268  
(503) 378-3292  
Fax (503) 373-7636

#### EUGENE

1400 Executive Parkway, Suite 200  
Eugene, OR 97401-2158  
(541) 686-7623  
Fax (541) 686-7980

#### BEND

Apprenticeship and Training  
Worksource Bend  
1645 NE Forbes Rd, Ste 106  
Bend, OR 97701-4990  
(541) 322-2435  
Fax (541) 389-8265

Oregon Relay TTY:711

#### MEDFORD

Apprenticeship and Training  
119 N Oakdale Ave.  
Medford, OR 97501-2629  
(541) 776-6201  
Fax (541) 776-6284

[www.oregon.gov/boli](http://www.oregon.gov/boli)

AN EQUAL OPPORTUNITY EMPLOYER

NPRM & Fiscal Impact for 1/28/15 meeting

Bureau of Labor and Industries

## Five Year Rule Review Report

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-006-0291

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking? \_\_\_ Yes X No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

No

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.

- Advisory committee members who participated in the original rulemaking process.
- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1045, Portland, OR 97232</u>	
Address	

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Not more than 16 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-006-0291, 839-006-0292, 839-006-0345

**AMEND:**

839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305

**REPEAL:**

**RENUMBER:**

839-006-0332 to 839-006-0350

**AMEND AND RENUMBER:**

839-006-0307 to 839-006-0240 *0340* *4/14/13*

**Statutory Authority:**

ORS 659A.805

**Other Authority:**

**Statutes Implemented:**

ORS 659A.103 &c\* 659A.142; H.B. 2111, 77th Leg., Reg. Session (Or. 2013); H.B. 2668, 77th Leg., Reg. Session (Or. 2013); S.B. 610, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-006-0205 and 839-006-0212 make the rules consistent with newly enacted legislation regarding substantial limitations.

Amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Amendments to 839-006-0280 implement newly enacted legislation regarding places of public accommodation and state government.

Amendments to 839-006-0305 modify the definition of place of public accommodation consistent with newly enacted legislation.

Amendments and renumbering of 839-006-0307 to 839-006-0340 reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities.

Adoption of 839-006-0345 provides information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

Renumbering of 839-006-0332 to 839-006-0350 moves the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

**FILED**  
12-30-13 5:40 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marcia Ohlemiller  
Rules Coordinator Name

Marcia.L.Ohlemiller@state.or.us  
Email Address



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. Ste. 1045 Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-006-0291, 839-006-0292, 839-006-0345

**AMEND:** 839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305, and any other Division 6 rules as necessary.

**REPEAL:**

**RENUMBER:** 839-006-0332 to 839-006-0350;

**AMEND & RENUMBER:** 839-006-0307 to 839-006-0340

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 - 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-006-0205 and 839-006-0212 would make the rules consistent with newly enacted legislation regarding substantial limitations.

Proposed amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 would provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Proposed amendments to 839-006-0290 would implement newly enacted legislation regarding places of public accommodation and state government.

Proposed amendments to 839-006-0305 would modify the definition of place of public accommodation consistent with newly enacted legislation.

Proposed amendments to and renumbering of 839-006-0307 to 839-006-0340 would reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The proposed amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities.

The proposed adoption of 839-006-0345 will provide information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

The proposed renumbering of 839-006-0332 to 839-006-0350, will move the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Statutory Authority: ORS 659A.805

Other Authority:

**Stats. Implemented:** Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Proposed amendments and adoptions would make the rules consistent with newly enacted legislation and the Americans with Disabilities Act. Adoptions of 839-006-0291, 839-006-0292, and 839-006-0345 would implement newly enacted legislation or clarify responsibilities under existing legislation.

Documents Relied Upon, and where they are available:

H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2111/Enrolled>.

H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB2668/Enrolled>.

S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/SB610/Enrolled>.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule; Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or make the rules consistent with newly enacted legislation which BOLJ has no authority not to enforce or to change.

Marcia.Lohmiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

**Bureau of Labor and Industries**

**Five Year Rule Review Report**

ORS 183.405 requires the bureau to review new rules adopted after January 1, 2006, within five years after adoption. Please refer to the Five Year Rule Review Policy for information on completing this form.

Rule Number: 839-006-0292

Date Rule Became Effective: 12/30/2013

Date Review Due: 12/30/2018

Bureau Division or Unit: Civil Rights \_\_\_\_\_

Name and Title of Employee Completing this Report: Chris Lynch, Operations Manager

Date the Review was Completed: October 29, 2018

Advisory committee used during rulemaking?  Yes  No

If yes, attach a list of the members and their email or regular mail addresses. Provide a copy of the completed report to the members.

Use available information to answer the following four questions. Review the Notice of Proposed Rulemaking, the Statement of Need and Fiscal Impact, and the Certificate and Order for Filing Permanent Administrative Rules filed with the rule and any amendments to the rule.

1) Has the rule had the intended effect?

yes

2) Was the fiscal impact of the rule underestimated, overestimated, just about right, or unknown?

Just about right

3) Do any changes in the law (enacted since the rule was adopted) now require the rule to be repealed or amended?

no

4) Is the rule still needed?

yes

5) What impacts has the rule had on small business?

None known

Attach to this Review: Subject rule's Notice of Proposed Rulemaking and Permanent Administrative Order; List of Members of Rules Advisory Committee, if any, and their email or regular mail addresses.

Required Filing/Copies:

File this report in the bureau's official file for this rule.

Provide a copy of this report to:

- The bureau's Rules Coordinator.
- Advisory committee members who participated in the original rulemaking process.

- The Oregon Secretary of State, 800 NE Summer St., Salem, OR 97310, Attn: Administrative Rules Section.
- The Small Business Rules Advisory Committee, Steve Mabry, Oregon State Archives, 800 Summer St. NE, Salem, OR 97304.

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing by the Bureau of Labor and Industries 839

Agency and Division	Administrative Rules Chapter Number
<u>Marcia Ohlemiller</u>	<u>(971) 673-0784</u>
Rules Coordinator	Telephone
<u>800 NE Oregon St., Ste. 1046, Portland, OR 97232</u>	
Address	

To become effective Upon filing, Rulemaking Notice was published in the November 2013 Oregon Bulletin.

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

839-006-0291, 839-006-0292, 839-006-0345

**AMEND:**

839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305

**REPEAL:**

**RENUMBER:**

839-006-0332 to 839-006-0350

**AMEND AND RENUMBER:**

839-006-0307 to 839-006-0340 *0340 4/14/13*

**Statutory Authority:**

ORS 659A.806

**Other Authority:**

**Statutes Implemented:**

ORS 659A.103 & 659A.142; H.B. 2111, 77th Leg., Reg. Session (Or. 2013); H.B. 2668, 77th Leg., Reg. Session (Or. 2013); S.B. 610, 77th Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Amendments to 839-006-0206 and 839-006-0212 make the rules consistent with newly enacted legislation regarding substantial limitations.

Amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Amendments to 839-006-0290 implement newly enacted legislation regarding places of public accommodation and state government.

Amendments to 839-006-0305 modify the definition of place of public accommodation consistent with newly enacted legislation.

Amendments and renumbering of 839-006-0307 to 839-006-0340 reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf of individuals with disabilities.

Adoption of 839-006-0345 provides information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

Renumbering of 839-006-0332 to 839-006-0350 moves the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

**FILED**  
12-30-13 5:40 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Marla Ohlemiller

Rules Coordinator Name

Marla.L.Ohlemiller@state.or.us

Email Address



Secretary of State  
**NOTICE OF PROPOSED RULEMAKING**  
A Statement of Need and Fiscal Impact accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

800 NE Oregon St. Ste. 1045 Portland, OR 97232

971-673-0784

Rules Coordinator

Address

Telephone

**RULE CAPTION**

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing  
**ADOPT:** 839-006-0291, 839-006-0292, 839-006-0345

**AMEND:** 839-006-0205, 839-006-0212, 839-006-0270, 839-006-0290, 839-006-0295, 839-006-0305, and any other Division 6 rules as necessary.

**REPEAL:**

**RENUMBER:** 839-006-0332 to 839-006-0350;

**AMEND & RENUMBER:** 839-006-0307 to 839-006-0340

Stat. Auth.: ORS 659A.805

Other Auth.:

Stats. Implemented: ORS 659A.103 – 659A.142; II.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

**RULE SUMMARY**

Proposed amendments to 839-006-0205 and 839-006-0212 would make the rules consistent with newly enacted legislation regarding substantial limitations.

Proposed amendments to 839-006-0270 and 839-006-0295 and adoption of 839-006-0292 would provide definitions for auxiliary aids and services for state government. Adoption of 839-006-0291 would provide clarification for reasonable modifications by state government. These are all consistent with the Americans with Disabilities Act and ORS 659A.139. Proposed amendments to 839-006-0290 would implement newly enacted legislation regarding places of public accommodation and state government.

Proposed amendments to 839-006-0305 would modify the definition of place of public accommodation consistent with newly enacted legislation.

Proposed amendments to and renumbering of 839-006-0307 to 839-006-0340 would reorganize the rule as theories of discrimination that apply to state government and places of public accommodation. The proposed amendments would also replace the term "complainant" with "individual" because the Commissioner and the Attorney General may bring complaints on behalf on individuals with disabilities

The proposed adoption of 839-006-0345 will provide information on assistance animals in places of public accommodation and state government, consistent with newly enacted legislation.

The proposed renumbering of 839-006-0332 to 839-006-0350, will move the existing rule without amendments, as the subject of the rule, requirements for transient lodging, is separate and not a part of the Oregon disability statutes.

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

November 28, 2013

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

**Note:** Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending, adopting and renumbering rules in Division 839-006 regarding disabilities

Statutory Authority: ORS 659A.805

Other Authority:

**Stats. Implemented:** Stats. Implemented: ORS 659A.103 – 659A.142; H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013); S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013)

Need for the Rule(s):

Proposed amendments and adoptions would make the rules consistent with newly enacted legislation and the Americans with Disabilities Act. Adoptions of 839-006-0291, 839-006-0292, and 839-006-0345 would implement newly enacted legislation or clarify responsibilities under existing legislation.

Documents Relied Upon, and where they are available:

H.B. 2111, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/jz/2013R1/Measures/Text/HB2111/Enrolled>.

H.B. 2668, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/jz/2013R1/Measures/Text/HB2668/Enrolled>.

S.B. 610, 77<sup>th</sup> Leg., Reg. Session (Or. 2013), available at <https://olis.leg.state.or.us/jz/2013R1/Measures/Text/SB610/Enrolled>.

Fiscal and Economic Impact:

No fiscal or economic impact is anticipated as a result of the proposed amendments. The laws that the proposed rules would implement are in current statutes and fiscal or economic impact, if any, would result from those laws.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

No fiscal or economic impact is anticipated from the proposed rule amendments.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Oregon discrimination laws apply to all businesses. The Employment Department estimates that 107,103 small businesses may be subject to the proposed rule amendments. However, there is no anticipated cost of compliance.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

No new reporting, recordkeeping, or other administrative costs of compliance are required or anticipated.

c. Equipment, supplies, labor and increased administration required for compliance:

No additional equipment, supplies, labor, or increased administration are required or anticipated under the proposed rules.

d. How were small businesses involved in the development of this rule?

Small business representatives are represented on BOLI's stakeholder mailing list.

Administrative Rule Advisory Committee consulted?: No.

If not, why?:

The proposed rule amendments and adoptions would clarify statutory requirements already in place and/or make the rules consistent with newly enacted legislation which BOLI has no authority not to enforce or to change.

Marcia.Lohlemiller@state.or.us

Marcia Ohlemiller

10/15/2013

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.



REVIEW OF ADOPTED RULES – ORS 183.405

Outdoor Areas Package

OAR 845-005-0329 Licensing Outdoor Areas Not Abutting a Licensed Building  
OAR 845-005-0331 Licensing Outdoor Areas Abutting a Licensed Building  
OAR 845-006-0309 Requirements for Outdoor Areas Not Abutting a Licensed Building

**Date Adopted:** June 1, 2014

**Date Review Due:** June 1, 2019

**Date Review Completed:** May 24, 2019

**Advisory Committee (AC) used?** Yes.

**AC members:** See attached.

**1) Did the rule achieve its intended effect? Yes.**

**a) What was the intended effect?**

Before March 2012, the Commission had granted an increasing number of annual liquor licenses at locations where alcohol was sold, served and consumed in exclusively outdoor areas. The Commission took into account the unique nature of these types of premises, which consist of outdoor areas that do not abut previously licensed buildings, and the Commission placed certain operating restrictions on each annual license that it had issued to these types of operations (i.e., food carts).

The Commission's reliance on restrictions to manage the operating risks presented by the food cart business model presented two challenges. First, it exposed food cart licensees to more severe sanctions than they might otherwise receive because failure to adhere the provisions of a restriction is a Category I violation, the presumptive penalty which is license cancellation. Second, as the number of annual liquor licenses issued at this type of location increased, so too did the number of substantive variations among the restrictions used to regulate them. The rules that were proposed alleviated these challenges and created a uniform licensing framework for these location.

These proposed rules established licensing qualification standards for outdoor areas that do not abut applicant's or licensee's previously licensed building (i.e., food carts). The rule was designated to operate conjunction with OAR 845-006-0309 which established licensing requirements for these locations.

The amendments to OAR 845-005-0331 clarified that going forward, the rule only applied to outdoor areas that abut an applicant's or licensee's previously licensed building (i.e., patios and cafes). The proposed amendments did not substantively change the licensing qualification or operating standards that currently apply to these locations.

**b) How did the rule succeed or fail in achieving this effect?**

The rules succeed in alleviating these challenges and creating a uniform licensing framework for these location. The rules also successfully established licensing

previously licensed building (i.e., food carts).

2) **Was the fiscal impact underestimated, overestimated, just about right, or unknown?** Just about right.

a) **What was the estimated fiscal impact?**

The Commission expected the rules package to have a positive fiscal impact on current food cart licensees because it reduced operating uncertainties for these licensees.

The Commission expected the rules package to have a neutral fiscal impact on traditional brick-and-mortar licensees (i.e., patios and sidewalk cafes) because the amendments to OAR 845-005-0331 did not substantively revise the licensing standards or operating requirements that applied to these licensees, and the rules in this package were not expected to encourage or discourage food cart license applications (i.e., competition).

b) **What was the actual fiscal impact?**

As projected above.

c) **If the answer to question 2 is unknown, briefly explain why.**

N/A

3.) **Have subsequent changes in the law required the rule to be repealed or amended? If yes, explain.** No.

4.) **Is the rule still needed? Yes. Explain:**

845-005-0329 and 845-006-0309 are still needed because they provide the licensing qualification standards and operating requirements for outdoor areas that don't abut a licensed building. Without these rules there would be no standards or requirements.

845-005-0331 is still needed because it provides the licensing qualification standards for outdoor areas that do abut a licensed building. Without this rule there would be no standards.

5.) **What, if any, is the impact on Small Businesses?**

These rules likely had a positive fiscal impact on food cart licensees, which are typically small businesses, because it reduced operating uncertainties for these licensees. These rules also allowed the Commission to remove operating restrictions which ensured that food cart licensees were not subject to greater sanctions for identical acts than traditional brick-and-mortar licensees. These rules likely had a neutral fiscal impact on traditional brick-and-mortar licensees because these rules did not encourage or discourage food cart license applications.

**Review Completed By:**

<u>Emily Febles</u>	<u>Rules Coordinator</u>	<u>5/24/19</u>
<b>Name</b>	<b>Signature</b>	<b>Title</b>
		<b>Date</b>

**AP&P Review:**

<u>Kelly Routt</u>	<u>Director of Administrative Policy &amp; Process</u>	<u>5/24/19</u>
<b>Name</b>	<b>Signature</b>	<b>Title</b>
		<b>Date</b>

## OLCC Advisory Committee Invitation List

### Outdoor Areas Package

OAR 845-005-0329, OAR 845-005-0331, OAR 845-006-0309

Wednesday, December 18, 2013 @ 9:00 a.m. – Noon

*Invitations have been sent to the following individuals:*

copy  
5/24/19

### Community and Public Safety Representatives

Andy Smith (City of Portland)  
Angela Kirkman / Brendon Haggerty (Kerns Neighborhood Association)  
Christina Thompson (Overlook Neighborhood Association)  
David Jackson, Officer (Portland Police Bureau)  
David Sweet (Portland Noise Review Board)  
Jeff Ruscoe (Oregon Mental Health & Addiction Services)  
John Schmerber, Commander (Hillsboro Police Department)  
Judy Cushing / Tom Parker (Lines for Life)  
Kathy Stromvig / Anne Pratt (Mothers Against Drunk Driving)  
Linda Fisher-Lewis (Oregon Department of Transportation)  
Lisa Frisch / Bill Sinnott (Portland Downtown Retail & Clean & Safe Programs)  
Lise Gervais (Public Action Management)  
Mary Ann Schwab (Neighborhood Advocate)  
Mary Ellen Glynn (Oregon Alcohol & Drug Policy Commission)  
Michael Roth / Tom Foley (Rose City Park Neighborhood Association)  
Paul van Orden, Officer (Portland Noise Control Program)  
Ruben Duemling (Sunnyside Neighborhood Association)  
Scott Winkels (League of Oregon Cities)  
Sue Pearce / Christine Heycke (Hosford-Abernethy Neighborhood Association)  
Theresa Marchetti (Portland Office of Neighborhood Involvement)  
Veronica Rinard (Travel Portland)

### Licensees and Industry Representatives

Bill Perry / Nellie deVries (Oregon Restaurant & Lodging Association)  
Brian Butenschoen (Oregon Brewers Guild)  
Brian McMenamin (McMenamin's)  
Brian Vollegraaf / Wes Kasubuchi (Zenbu Food Cart)  
Brian White (Captured Beer Bus Food Cart)  
Bruce Fife (American Federation of Musicians Local 99)  
David Staley / Michelle Staley (The Lot Food Cart in Bend)  
Doug LaPlaca (Visit Bend)  
Duke Tufty (Wyse Kadish)  
Elaine Albrich (Stoel Rives)



Gregg Abbott (Oregon Street Food Association)  
Jacob Richardson / Sam Ach (Organic Redneck Kitchen Food Cart in Leaburg)  
Jeff Plew (Concept Entertainment)  
Jesse Lyon (Davis Wright Tremaine)  
Judy Craine (Holman Bar & Grill)  
Matt Cordova (21st Avenue Bar & Grill)  
Michael McCreery (Sluggo's Hot Dogs Food Cart in Springfield)  
Rachael Grossmean / Tyler Johnston (Artigliano Food Cart)  
Roger Goldingay / Carol Otis (Cartlandia Food Carts)  
Rose Guardino (Divine Café Food Cart)  
Suzanne Moodhe (The Beer Porches Food Carts on Alberta & Lombard)

**OLCC Staff**

Annabelle Henry (AP&P)  
Dan Croy (Licensing)  
Farshad Allahdadi (Licensing)  
Jesse Sweet (AP&P)  
Shannan Coyle (AP&P)  
Shannon Hoffeditz (Enforcement)

**From:** Febles Emily \* OLCC  
**To:** Febles Emily \* OLCC  
**Bcc:** "bffe@afm09.org"; "JACB-J6@aol.org"; "cordovanat@aol.com"; "jeff@ceqportland.com"; "johns@c.hillsboro.or.us"; "jthomas20@comcast.net"; "jesselynn@dwt.com"; "gorogor@earthlink.net"; "ruscoe-jeff@email.state"; "lise@gervais-lynd.com"; "kemsna@gmail.com"; "haggorb@gmail.com"; "Gregg.abbott@gmail.com"; "e33maschwab@gmail.com"; "msrwistaria2010@gmail.com"; "kasubuchi1@hotmail.com"; "brianni@hq.mcmenamin.com"; "Annabelle.henry@state.or.us"; "Judyc@linesforlife.org"; "tomp@linesforlife.org"; "Eugene.or@madd.org"; "Portland.or@madd.org"; "cheycke@msn.com"; WINKELS Scott; "brian@oregonbeer.org"; "bperry@oregonRLA.org"; "ldevries@oregonria.org"; "chair@overlookneighborhood.org"; "bsinnot@portlandalliance.com"; "lfrisch@portlandalliance.com"; "Andy.smith@portlandoregon.gov"; "david.jackson@portlandoregon.gov"; "noise@portlandoregon.gov"; "paul.vanorden@portlandoregon.gov"; "Theresa.marchetti@portlandoregon.gov"; "linda.c.fischer-lewis@state.or.us"; "eralbrich@steel.com"; "sue@suepearce.biz"; "hoac@sunnysideneighborhood.com"; "veronica@travelportland.com"; "doug@visitbend.com"; TUFTY Duke; "Marvellen\_givnn@yahoo.com"; ROUITT Kelly \* OLCC; HALEY Bryant \* OLCC; CROY Dan \* OLCC  
**Subject:** Outdoor areas (food carts) 5-year Rule Review  
**Date:** Friday, May 24, 2019 11:33:00 AM  
**Attachments:** image003.png  
image004.png  
image005.png  
image006.png  
image007.png  
image008.png  
outdoor\_package\_5yr\_review\_OLCC\_PDF.pdf

Greetings,

ORS 183.405 directs state agencies to review new rules, with some exceptions, within five years of adoption and create a report. You will find a copy of this report attached because you were invited to be part of the Rules Advisory Committee (RAC) that assisted the OLCC in the thoughtful creation of these rules:

OAR 845-005-0329 Licensing Outdoor Areas Not Abutting a Licensed Building

OAR 845-005-0331 Licensing Exterior Areas

OAR 845-006-0309 Requirements for Outdoor Areas Not Abutting a Licensed Building

Thank you,

Emily Febles

Administrative Rules Coordinator

Oregon Liquor Control Commission (OLCC)

Desk: 503-872-5250 | [Emily.Febles@oregon.gov](mailto:Emily.Febles@oregon.gov)



Follow us on social media

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form

Oregon Liquor Control Commission

845

Agency and Division

Administrative Rules Chapter Number

Creates distinct licensing qualification and operating standards for outdoor areas not abutting a licensed premises.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of

The proposed new rules and amendments to the Outdoor Areas Package (OAR 845-005-0329, 845-005-0331 & 845-006-0309).

**Statutory Authority:**

ORS 471, including ORS 471.040, 471.730(1) & (5)

**Other Authority:**

**Statutes Implemented:**

ORS 471.001, 471.030(1), 471.313(1) & 471.315(1)(d)

**Need for the Rule(s):**

Since March of 2012, the Commission has granted an increasing number of annual liquor licenses at locations where alcohol is sold and served by food cart operators and consumed in exclusively outdoor areas. Taking into consideration the unique nature of this type of premises, which consists solely of an outdoor area that does not abut a previously licensed building, the Commission has placed operating restrictions on each annual license that it has issued to such operators. The Commission's use of restrictions to manage the operating risks presented by the food cart business model subjects food cart licensees to the risk of more severe sanctions than traditional brick-and-mortar licensees would be subject to for a similar violation. It could also lead to substantive variations among restriction provisions as the number of food cart licenses granted continues to grow. The proposed rules package would alleviate these concerns.

**Documents Relied Upon, and where they are available:**

OLCC Advisory Committee Meeting Minutes dated November 20, 2012; January 29, 2013; and December 18, 2013. Available from the Oregon Liquor Control Commission, Administrative Policy & Process Division.

Secretary of State Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact published in the Oregon Bulletin on March 7, 2013. Available from the Oregon Liquor Control Commission, Administrative Policy & Process Division, or from the Secretary of State, Archives Division.

**Fiscal and Economic Impact:**

This statement takes into account the fiscal impact on: (a) Liquor Licensees; (b) Local Government; (c) State Agencies; and (d) the Public.

**(a) Liquor Licensees**

The Commission expects the proposed rules package to have a positive fiscal impact on current food cart licensees because it will reduce operating uncertainties for these licensees. It will also allow the Commission to remove many, if not all, of the operating restrictions under which these licensees are currently operating. Removing these restrictions will ensure that food cart licensees are not subject to greater sanctions for identical acts than traditional brick-and-mortar licensees.

The Commission also expects the proposed rules package to have a positive fiscal impact on prospective food cart licensees because it will simplify the application process and provide greater operational certainty for applicants.

The Commission recognizes that some food cart licensees may conclude that the proposed rules package will have a negative fiscal impact on food cart licensees because it does not grant them the same privileges as those held by traditional brick-and-mortar establishments. It is the Commission's view, however, that these two operations are substantially different from one another. As noted above, the overall impact of the proposed rules package would be to place into rule, constraints that are currently implemented through license restrictions. Therefore, it is the Commission's view that this tactical regulatory shift is more likely to have a positive fiscal impact on food cart licensees.

The Commission expects the proposed rules package to have a neutral fiscal impact on traditional brick-and-mortar licensees (i.e., patios and

sidewalk cafes) because the proposed amendments to OAR 845-005-0331 do not substantively increase the licensing standards or operating requirements that current apply to these licensees, and the proposed new rules in this package are not expected to encourage or discourage food cart license applications (i.e., competition).

(b) Local Government.

The Commission expects the proposed rules package to have a positive fiscal impact on local governments because it creates distinct and uniform licensing qualification standards and operating requirements where none previously existed. Moreover, in doing so, it takes into consideration the unique operating risks presented by food carts. This is expected to have a positive impact on neighborhood livability standards and public safety, which should result in a positive fiscal impact on local governments.

(c) State Agencies.

The Commission expects the proposed rules package to have a neutral fiscal impact on outside state agencies because these rules do not apply to outside state agencies.

(d) The Public.

The Commission expects the proposed rules package to have a positive fiscal impact on the public to the extent that it enables food cart operators to supply desired products and services, reduces the Commission's administrative costs and maintains the Commission's current best practices and public safety goals.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The Commission anticipates no new costs to comply with the proposed rules package for outside state agencies, units of local government or members of the public because these rules do not apply to these entities and do not include any new reporting or recordkeeping requirements.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

The Commission assumes that the majority of its licensees are small businesses. However, the Commission does not categorize its licensees, or applicants for a liquor license, according to the size of their underlying business operations. At present, there are approximately 11 food cart operators who hold an annual liquor license. The Commission anticipates no new costs of compliance to comply with the proposed amendments for these licensees because the proposed amendments do not impose any new compliance costs onto these licensees. The Commission is unable to accurately estimate the number of food cart operators that are small businesses that might seek an annual license and therefore become subject to these rules. However, the Commission anticipates no new costs of compliance to comply with the proposed rules package for businesses of any type or size because these rules do not impose new reporting, recordkeeping, equipment, or supply costs onto licensees.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

(see above)

**c. Equipment, supplies, labor and increased administration required for compliance:**

(see above)

**How were small businesses involved in the development of this rule?**

Small businesses as well as interested licensees, industry representatives, law enforcement agencies, public safety organizations, members of the public, and other interested parties were invited to attend an advisory committee meeting that was held on December 18, 2013. Stakeholders will have an additional opportunity to comment on the proposed amendments at the public hearing that will be held in February of 2014.

**Administrative Rule Advisory Committee consulted?:** Yes  
If not, why?:

<u>03-13-2014 5:00 p.m.</u>	<u>Annabelle Henry</u>	<u>annabelle.henry@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

<b>FILED</b> 1-15-14 2:46 PM ARCHIVES DIVISION SECRETARY OF STATE
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# Five-Year Rule Review

ORS 183.405

**Rule Name:** Compliance

**Rule Number(s):** OAR 847-001-0024

**Adoption Date:**

January 10, 2014

**Review Due Date:**

January 10, 2019

**Review Date:**

December 12, 2018

**Sent to SOS & SBRAC Date:**

February 15, 2019

**Advisory Committee Used:** Administrative Affairs Committee

**Advisory Committee Not Used**

## What was the intended effect of this rule adoption?

The rule was intended to clarify that failure to comply with a Board investigation or failure to comply with a Board Agreement violates ORS 677.190(17) and is grounds for disciplinary action.

## Has this rule adoption had its intended effect?

Yes  
 No

The rule clarifies that failure to comply with a Board investigation or failure to comply with a Board Agreement violates ORS 677.190(17) and is grounds for disciplinary action.

## Was the anticipated fiscal impact of this rule correct?

Yes  
 No

No fiscal impact was anticipated. Since implementation, the rule has not created any fiscal impact to the Board, other state agencies, units of local government, small businesses, licensees, or the public.

## Have subsequent changes in the law required this rule to be/can be amended or repealed?

Yes  
 No

This rule was amended on October 7, 2016 to change the name of "Consent Agreements" to "Consent Agreements for Re-entry to Practice" in order to accurately reflect the nature of these agreements.

## Is there a continued need for this rule?

Yes  
 No

Yes.

## What impact has the rule had on small businesses?

Yes  
 No

None.

Nicole Krishnaswami, Executive Director

Printed name



Signature

11/9/18

Date

# Five-Year Rule Review

ORS 183.405

**Rule Name:** Approval of Consent Agreements for Re-entry to Practice

**Rule Number(s):** OAR 847-001-0045

**Adoption Date:**

April 4, 2014

**Review Due Date:**

April 4, 2019

**Review Date:**

December 12, 2018

**Sent to SOS & SBRAC Date:**

February 15, 2019

**Advisory Committee Used:** Administrative Affairs Committee

**Advisory Committee Not Used**

## What was the intended effect of this rule adoption?

The rule was intended to delegate authority to the Executive Director and Medical Director to review and approve the terms and conditions in a Consent Agreement for re-entry to practice. The Applicant may be granted a license once the Consent Agreement is signed by the Executive Director or Medical Director.

Yes  
 No

## Has this rule adoption had its intended effect?

The Executive Director and Medical Director are authorized to review and approve a Consent Agreement for Re-entry to Practice.

Yes  
 No

## Was the anticipated fiscal impact of this rule correct?

The anticipated fiscal impact was just about right. As anticipated, this rule expedited the re-entry process, creating a positive fiscal impact to licensees by allowing licensees to begin their re-entry plan and start practicing earlier. No fiscal impact was anticipated and the rule has not created any fiscal impact to the Board, other state agencies, units of local government, small businesses, or the public.

Yes  
 No

## Have subsequent changes in the law required this rule to be/ can be amended or repealed?

This rule was amended on October 7, 2016 to change the name of "Consent Agreements" to "Consent Agreements for Re-entry to Practice" in order to accurately reflect the nature of these agreements. Practice." This rule was amended again on October 5, 2018, to allow the Executive Director and Medical Director to terminate these agreements with a Licensee's agreement.

Yes  
 No

## Is there a continued need for this rule?

Yes.

Yes  
 No

## What impact has the rule had on small businesses?

None.

Nicole Krishnaswami, Executive Director  
Printed name



Signature

11/9/18  
Date

# Five-Year Rule Review

ORS 183.405

**Rule Name:** Fraud or Misrepresentation

**Rule Number(s):** OAR 847-008-0058

**Adoption Date:**

October 3, 2014

**Review Due Date:**

October 3, 2019

**Review Date:**

December 12, 2018

**Sent to SOS & SBRAC Date:**

February 15, 2019

- Advisory Committee Used:** Administrative Affairs Committee  
 **Advisory Committee Not Used**

## What was the intended effect of this rule adoption?

The rule was intended to compile existing rules to clarify that violations of ORS 677.190(8), providing false, misleading or deceptive information on any application, affidavit or registration for any license type or status, is grounds for a \$195 fine for the first violation, a \$250 fine for the second violation, and a \$500 fine for the third or subsequent violation, and, possibly, further disciplinary action.

## Has this rule adoption had its Intended effect?

- Yes  
 No

The rule compiles existing rules to clarify that violations of ORS 677.190(8), providing false, misleading or deceptive information on any application, affidavit or registration for any license type or status, is grounds for a \$195 fine for the first violation, a \$250 fine for the second violation, and a \$500 fine for the third or subsequent violation.

## Was the anticipated fiscal impact of this rule correct?

- Yes  
 No

No fiscal impact was anticipated. Since implementation, the rule has not created any fiscal impact to the Board, other state agencies, units of local government, small businesses, licensees, or the public.

## Have subsequent changes in the law required this rule to be/ can be amended or repealed?

- Yes  
 No

This rule was amended on October 9, 2015 to clarify that the Board will not grant or renew a license until an applicant or licensee has paid the civil penalty or is proceeding to a contested case hearing under ORS 183.745.

## Is there a continued need for this rule?

- Yes  
 No

Yes.

## What Impact has the rule had on small businesses?

- Yes  
 No

None.

Nicole Krishnaswami, Executive Director  
Printed name

  
Signature

11/9/18  
Date







# Oregon

Kate Brown, Governor

Public Utility Commission

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November 25, 2019

VIA ELECTRONIC MAIL

Secretary of State – Administrative Rules Unit

[Adminrules.archives@oregon.gov](mailto:Adminrules.archives@oregon.gov)



RE: Public Utility Commission of Oregon Five Year Rule Review

Rule Review Due Date: 11/20/19      Date Adopted: 12/16/14, Effective 3/2/2015

Docket No. AR 583

Rule(s) Reviewed: 860-001-0400 Pleadings and Motions General

Based on the information on hand and general knowledge of Commission activities:

Did the rule(s) have the intended effect?

*Yes, as part of the overhaul of the practice and procedural rules to implement changes to streamline eFiling (the Commission's electronic filing system for participants in our dockets), this rule was promulgated to clarify the difference between pleadings and motions in the PUC's proceedings and set the stage for delineating timelines in rules following this rule in Division 001.*

Was the anticipated fiscal impact of the rule underestimated or overestimated?

*At the time of rulemaking, the PUC stated that there would be potential savings on document printing, duplication, and delivery costs and potential costs for the PUC and stakeholders to print documents. This remains true, and more stakeholders express a preference to work with electronic documents especially with the PUC's subsequent enhancements made to the public facing version of the docketing system.*

Do subsequent changes in the law require the rule to be repealed or amended?

*There are no changes in the law requiring this rule to be repealed or amended.*

Are the rules still needed?

*Yes. The rule is still necessary to ensure clarity in timelines regarding pleadings, motions, responses, and replies.*

**Reviewed on 11/20/19 by:**

*/s/Diane Davis*

Diane Davis

Rules Project Leader



# Oregon

Kate Brown, Governor

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November 25, 2019

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**RE: Public Utility Commission of Oregon Five Year Rule Review**

Rule Review Due Date: 11/20/19

Date Adopted: 12/16/14, Effective 3/2/2015

Docket No. AR 580

Rule(s) Reviewed: 860-085-0500, 860-085-0550, 860-085-0600, 860-085-0650, 860-085-0700, 860-085-0750

Based on the information on hand and general knowledge of Commission activities:

Did the rule(s) have the intended effect?

*Yes, the rules provide guidance for the establishment of a voluntary emission reduction program for natural gas utilities per ORS 757.539, as intended.*

Was the anticipated fiscal impact of the rule underestimated or overestimated?

*At the time of rulemaking, the PUC stated that because programs established under these rules are voluntary and because projects could vary in scope, the potential magnitude of positive or negative impacts could not be quantified at that time. To date, there have been no applications for voluntary projects so the anticipated fiscal impact statement remains accurate.*

Do subsequent changes in the law require the rule to be repealed or amended?

*There have been no subsequent changes in the law.*