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DIVISION 8

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

471-008-0000 Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6) – (10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) – (d), (j) – (l) or (o) – (p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8) – (9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 471-008-0000(7) and this agreement. This agreement relates to the following mediation:

- (a) _____
(Identify the mediation to which this agreement applies)

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(b) To the extent authorized by OAR 471-008-0000(7), mediation communications in this mediation are: (check one or more)

___ confidential and may not be disclosed to any other person

___ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

___ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

(c) _____
Name of Agency
Signature of Agency's authorized representative Date
(when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

(d) _____
Name of party to the mediation
Signature of party's authorized representative Date

(e) _____
Name of party to the mediation
Signature of party's authorized representative Date

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

- (A) A request for mediation; or
(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or
(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or
(D) Strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

- (A) Attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or
(B) Attorney work product prepared in anticipation of litigation or for trial; or
(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from dis-

closure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224 & ORS 657.610
 Stat. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232
 Hist.: ED 2-1999 f. & cert. ef. 5-5-99

DIVISION 10

**ADMINISTRATIVE SERVICES
 GENERAL AND INTERNAL RULES**

471-010-0005

Director

As used in these rules and unless the context requires otherwise, the title “Administrator” or “Assistant Director” means the Director of the Employment Department of the State of Oregon. Where appropriate, “Administrator” or “Director” shall also mean any duly authorized representative of the Director.

Stat. Auth.: ORS 657.176, ORS 657.260, ORS 657.265 & ORS 657.610
 Stats. Implemented: ORS 657.010(5)
 Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; ED 4-1993, f. & cert. ef. 11-22-93

471-010-0010

Rules Procedure

Prior to the adoption, amendment, or repeal of any rule, the Employment Department shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State’s Bulletin referred to in ORS 183.360 at least twenty-one (21) days prior to the effective date.

(2) By mailing a copy of the notice to persons on the Employment Department Director’s mailing list established pursuant to ORS 183.335(7) at least twenty-eight (28) days prior to the effective date.

(3) By mailing a copy of the notice to the Associated Press, the United Press International, and to a newspaper of statewide circulation.

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 - ORS 657.270, ORS 657.335, ORS 657.610 & Ch. 729, OL 1993
 Stats. Implemented: ORS 183.335 & ORS 183.360
 Hist.: IDE 149, f. & ef. 12-29-75; IDE 1-1984, f. & ef. 3-21-84; ED 4-1994, f. & cert. ef. 9-2-94

471-010-0015

Effective Date of Administrative Rule Adoptions

(1) Unless otherwise provided in this Chapter, the rules in effect at the time an individual files a claim for benefits shall be applied to issues associated with that claim for benefits.

(2) For purposes of this rule, a “claim for benefits” includes an initial, additional or continued claim.

Stat. Auth.: ORS 657.167, ORS 657.260, ORS 657.265 & ORS 657.610
 Stats. Implemented: ORS 657.610 & ORS 657
 Hist.: ED 4-1993, f. & cert. ef. 11-22-93

471-010-0020

Attorney General’s Model Rules

Division 1 of the Attorney General’s Model Rules of Procedure effective September 15, 1997, shall be applicable to rulemaking functions of the Employment Department.

[ED. NOTE: The full text of the Attorney General’s Model Rules of Procedure is available from the office of the Attorney General or Employment Department.]
 Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.610 & ORS 183.341
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 1-1978, f. & ef. 3-6-78; IDE 1-1980, f. & ef. 1-11-80; IDE 9-1981, f. & ef. 12-14-81; IDE 1-1984, f. & ef. 3-21-84; IDE

1-1986, f. & ef. 2-7-86; ED 1-1988, f. & cert. ef. 4-1-88; ED 1-1991, f. & cert. ef. 4-1-91; ED 1-1992, f. & cert. ef. 2-3-92; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97

471-010-0030

Repealing Existing Rules

All existing Employment Department rules, save and except OAR 471-010-0010 adopted December 29, 1975, heretofore adopted are repealed. Such repeal, however, does not affect nor impair any act done, right acquired, or duty imposed prior to the effective date of these rules.

[ED. NOTE: Previous OAR 471-010-0005 through 471-042-0015, repealed by Administrative Order IDE 150, consisted of IDE 145, IDE 146, IDE 147, and IDE 148.]

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.610
 Hist.: IDE 150, f. & ef. 2-9-76

471-010-0040

Filing Timely Notices

(1) When an individual or employing unit is required by ORS Chapter 657, or the rules adopted pursuant thereto, to file a notice, request, appeal, application, payment, report, tax election, claim, or any other document within a specified time, such individual or employing unit may file such document by personal delivery or by mail to any office of the Employment Department in Oregon or similar employment office in any other state. Except for payments and tax reports, all notices, requests, appeals, applications, tax elections, or any other document may be filed by fax.

(2) When the document is filed by mail, the date of filing shall be the postmarked date affixed by the U.S. Postal Service, or in the absence of a postmarked date, the most probable date of mailing as determined by the Director, unless otherwise provided in ORS Chapter 657 or OAR chapter 471. When the document is filed by fax, the date of such filing shall be the receipt date stamped or written on the document by an employee of the Employment Department. If the receipt date is absent, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or challenged by the submitting individual or employing unit in which case the fax receipt date, if available, shall be used. If a filing date cannot otherwise be determined, the most probable date of receipt by the Employment Department, as determined by the Director, shall be the date of filing.

(3) When an individual or employing unit is entitled to notice of an action or decision by the director or authorized representative, the notice may be delivered in person or by first class mail. Unless otherwise provided in ORS Chapter 657 or OAR chapter 471, if the notice is mailed, the notice is considered served on the date it is deposited with the U.S. Postal Service, addressed to such individual or employing unit at the last address known to the Director.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657
 Hist.: IDE 2-1978, f. & ef. 7-21-78; ED 1-1991, f. & cert. ef. 4-1-91; ED 2-1996(Temp), f. & cert. ef. 6-26-96; ED 7-1996, f. 11-20-96, cert. ef. 12-2-96

Customer Information and Disclosure

471-010-0050

Definitions

(1) “Agent” means a person who is authorized to act for or in the place of another.

(2) “Customer” means any employer, employer representative, individual, individual’s representative, public agency, public employee (other than Oregon Employment Department staff in the performance of duty), non-governmental entity or member of the public that provides information to the department or receives a department service.

(3) “Confidential information” means information obtained from employing units, employees or other individuals pursuant to ORS Chapter 657.

(4) “Discharge of duties” means the duties related to the department programs and services pursuant to ORS Chapter 657, which includes, but is not limited to:

(a) Administration of the department including recruiting, hiring, appointing and evaluating Oregon Employment Department staff, host workers and others who may provide program, services or support functions for the department;

(b) Delivery of department and workforce programs and services in accordance with state or federal law;

(c) Cooperation with public employees in federal and state agencies administering unemployment insurance laws including, but not limited to system administration, coverage, collection of contributions, determination of eligibility and payment of benefits;

(d) Cooperation with public employees in state agencies administering recognized Oregon compensation and retirement, relief or welfare laws;

(e) Administration of federal or state grant programs awarded to the department in accordance with applicable laws, regulations or guidelines associated with the grant program;

(f) General duties of an agency head including, but not limited to cooperation with law enforcement and elected officials; or

(g) Cooperation with public employees in federal and state agencies charged with enforcing anti-discrimination and fair employment practice laws.

(5) "Functional Control" means functional supervision by an Employment Department management employee over the work activities of a hosted worker, including but not limited to assigning and reviewing work, providing feedback and training, and expectations for making corrective action, primarily but not necessarily regarding the ES/OJSS system.

(6) "Governmental planning functions" mean duties authorized under law that are not regulatory or enforcement in nature undertaken by state agencies or political subdivisions as defined in ORS 657.097 to facilitate policy decisions. These functions include, but are not limited to modeling, impact analysis, projections and forecasting.

(7) "Hosted worker" means a volunteer or non-department employee who works within the functional control of an Employment Department management employee providing services that are in alignment with the Department's mission. Typical hosted workers include VA (Veterans Administration) work-study students, Green Thumb (Older Worker Program) staff, and those from Summer Teacher Exchange or Student Intern programs. It does not include workers from workforce partner agencies who are providing non-Employment Department services, such as intake or case management activities for partner programs.

(8) "Party" has the same meaning as in ORS 183.310(6).

(9) "Person" has the same meaning as in ORS 183.310(7).

(10) "Recognized compensation and retirement, relief or welfare laws," means the following programs:

(a) Indigent Defense Program administered by the State Court Administrator pursuant to ORS 151.430 et. seq.;

(b) Compensation of Crime Victims administered by the Department of Justice pursuant to ORS 147.005 et. seq.;

(c) Foster care maintenance payments for youth administered by the State Office for Services to Children and Families and the Oregon Youth Authority pursuant to ORS 420.810 et. seq.;

(d) Maintenance payments to individuals with occupational handicaps administered by the Vocational Rehabilitation Division pursuant to ORS 344.511 et. seq.; and

(e) Housing for low income individuals administered by local housing authorities pursuant to ORS Chapter 456.

(11) "Third Party" means a person other than [the principal]an agent to whom the customer has authorized disclosure directly involved.

(12) "Written disclosure agreement" means an agreement for sharing or disclosing information by written, electronic, paper, verbal or other means.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & ORS 657

Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 6-1980, f. & ef. 9-8-80; IDE 2-1984, f. & ef. 9-28-84; IDE 3-1985, f. & ef. 12-16-85; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00

471-010-0051

Disclosure Charges

(1) The department may charge a reasonable fee for disclosures of records that involve more than incidental Oregon Employment Department staff time to prepare or require special data processing. Examples of such disclosures include, but are not limited to requests under the Oregon Public Records law for numerous documents or records; or discreet, one-time only public agency requests for a computer match of agency-supplied records against department wage records. The department's designated Custodian of Records shall have the final authority to set and approve charges.

(2) Charges for online access to department records resulting from interagency agreements include, but are not limited to:

(a) A monthly bookkeeping charge of \$50 for establishing and maintaining an account;

(b) Any programming costs to be billed at \$45 an hour associated with providing log-ons, limiting access to agreed upon screens, and any maintenance or security measures required to maintain access; and

(c) Overhead, which includes gathering, processing, maintaining, and accessing data to be charged as follows:

(A) Agencies with zero to ninety-nine individuals with authorized online access to department records shall be charged a flat fee based upon one tenth of one percent of the department's total annual costs relating to the collection and maintenance of the department's wage records.

(B) Agencies with one hundred to four hundred and ninety-nine individuals with authorized online access to department records shall be charged a flat fee based upon one half of one percent of the department's total annual costs relating to the collection and maintenance of the department's wage records.

(C) Agencies with five hundred or more individuals with authorized online access to department records shall be charged a flat fee based upon one percent of the department's total annual costs relating to the collection and maintenance of the department's wage records.

(3) The department shall submit quarterly invoices for the amount of the bookkeeping and access charges. Programming costs are due upon receipt of billing. The invoice shall note the department's contract number.

(4) The interagency agreement will certify the number of individuals authorized with on-line access to the department's records for the purpose of determining the amount of charges to be paid.

(5) Charges for disclosure of records to private entities shall be set by written agreement with the entity.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657

Hist.: IDE 6-1980, f. & ef. 9-8-80; IDE 1-1982, f. & ef. 6-30-82; IDE 2-1984, f. & ef. 9-28-84; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00

471-010-0052

Information Collection

(1) The department shall only collect and maintain customer data that is relevant and necessary to administer the program purpose(s) under ORS Chapter 657 and ORS Chapter 657A.

(2) In addition to the mandatory disclosure of social security numbers required under OAR 471-030-0025, the department may request that customers voluntarily provide their social security number to facilitate program administration, including research and statistical data or for such other purpose as disclosed to the customer. The department shall not refuse to provide a benefit or service to any customer that refuses a voluntary request to provide their social security number.

(3) Oregon Employment Department staff collecting information must safeguard customer information confidentiality and disclose only the information about the customer necessary to administer the program purpose(s) under ORS Chapter 657 and ORS Chapter 657A.

(4) Information pertaining to a customer obtained from another agency or source for the purposes of administering the department's programs is confidential.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & ORS 657

Hist.: 1DE 6-1980, f. & ef. 9-8-80; 1DE 2-1984, f. & ef. 9-28-84; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00

471-010-0054

Authorized Disclosure

(1) The department is authorized to disclose confidential information or records to public agencies, provided that a written disclosure agreement is in place:

(a) For mandatory disclosures under the Social Security Act or other federal law; or

(b) Under the following circumstances:

(A) In the “discharge of duties” as authorized by the department Director;

(B) For public administration of compensation and retirement, relief or welfare laws;

(C) To state and federal agencies authorized by ORS Chapter 657;

(D) For the payment of unemployment insurance benefits; or

(E) To state agencies or political subdivisions for governmental planning functions.

(2) The department is authorized to disclose confidential information or records for governmental planning functions by state agencies or political subdivisions provided that the information is:

(a) Only for planning purposes;

(b) Only if the data are necessary for the successful performance of those planning activities; and

(c) Only if the requesting agency’s authorizing statute clearly and reasonably provides that the agency perform planning functions.

(3) The department is authorized to disclose confidential information or records as authorized under ORS Chapter 657 to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires informed consent from the individual to whom the information pertains;

(b) Safeguards the information once in the hands of the non-governmental entity; and

(c) Requires the non-governmental entity to pay all costs associated with the disclosure.

(4) The department is authorized to disclose confidential information or records to a third party or agent if:

(a) The Oregon Employment Department staff receives a written authorization signed and dated by the customer that specifically states the information that may be disclosed;

(b) The written authorization is witnessed or verified by Oregon Employment Department staff, or notarized; and

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(5) Unless otherwise authorized by these rules the department is authorized to disclose confidential information or records to a customer only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer, or was previously provided to the customer; and

(b) The Oregon Employment Department staff is sure that the customer’s identity is the customer to which the information directly relates.

(6) The department is authorized to disclose confidential information or records to the customer’s attorney or Certified Public Accountant without written authorization by the customer if the attorney or CPA affirmatively represents their client relationship with the customer. Disclosure to any other agent of the customer requires a written disclosure under Section (4) of this rule.

(7) The department is authorized to disclose:

(a) Confidential information or records necessary to prepare for a pending hearing, once a request for hearing has been filed, or for a review arising under a state or federal program administered by the department to a party or agent of a party.

(b) Hearing record information to a party or agent of a party to the hearing. Documents or information submitted for the record but not received into evidence remain confidential and are not subject to disclosure except to the party submitting the document or information.

(8) The department is authorized to disclose confidential information or records to a legislator or other elected official, or their staff, if the department receives a copy of the customer’s letter. The department will treat the letter as the customer’s authorization for the legislator or other elected official to access that customer’s specific information. If no letter is available, Oregon Employment Department staff will provide specific customer information only after verifying with the elected official that the contact is from the customer. If contact was not from the customer, a written authorization is required.

(9) The department is authorized to disclose confidential information without the customer’s specific authorization and without a written disclosure agreement under the following provisions:

(a) In accordance with state or federal laws requiring cooperation with properly identified law enforcement officers or District Attorneys in the performance of their duties and pursuant to a warrant for the arrest of an individual;

(b) In civil or criminal proceedings to which the State of Oregon is a party;

(c) To authorized personnel of agencies of other states administering federally funded unemployment insurance programs, temporary assistance to needy families, child support enforcement programs, and food stamps;

(d) To properly identified officials of the United States Social Security Administration and the United States Department of Health and Human Services for audit and administration of the Supplemental Security Income Program;

(e) To properly identified officials of the United States Department of Agriculture for audit and administration of the food stamp program; or

(f) To properly identified officials of state and federal agencies charged with administration of fair employment practices and anti-discrimination activities.

(10) Oregon Employment Department staff are expected to comply with Oregon child abuse reporting laws, elderly abuse reporting laws and patient abuse reporting laws.

(11) When an authorized representative of the department has been served a subpoena or other legal compulsory process to produce or disclose information from department records and the disclosure of such information is not specifically allowed under ORS Chapter 657 or these rules:

(a) The Director shall promptly inform the Assistant Attorney General assigned to the department of such demand;

(b) If the disclosure would, in the opinion of the Assistant Attorney General, be inconsistent with the provisions of state law or any policy or rule adopted pursuant to such law, the Assistant Attorney General shall take action to prevent the disclosure.

(12) Drug or alcohol abuse information received from a federally funded treatment facility may not be retained or released by the department without the written consent of the patient.

(13) The Workforce Investment Act of 1998 (P.L. 105-220) requires the department to provide its core services funded under the Wagner-Peyser Act (29 U.S.C. 49 et. seq.) through a one-stop delivery system with other required one-stop partners. The federal Act also requires the department to provide information regarding filing claims for unemployment insurance through the one-stop delivery system. Although the federal Act does not require unemployment insurance benefits to be delivered through the one-stop delivery system, unemployment insurance claimants are required under OAR 471-020-0020 to submit enrollment information for job placement services and shall be provided access to reemployment services through the one-stop delivery system. Thus, the one-stop delivery system becomes an integral part of how the department administers its programs and services for claimants, job seekers and employers. As such, it is within the “discharge of duties” for the department Director to authorize disclosure of confidential information or records for purposes of administering the one-stop delivery system.

(a) The department is authorized to disclose confidential unemployment insurance wage records to the one-stop delivery system for performance measurement purposes only under the following conditions:

(A) The requesting agency is a required or mandatory one-stop partner as described in Section 121 of the federal Act or ORS Chapter 411.935(2);

(B) The individual for whom data are requested must be registered as a job applicant within the Employment Service system;

(C) The individual for whom data are requested must have been provided with full disclosure of how the information will be used and must have given informed consent for their data to be used;

(D) The requested data shall not be used for eligibility determination, case management, intake, compliance, or any other purposes, except as required by state or federal law, or established through interagency agreements;

(E) The data can only be disclosed to "public employees," i.e. employees of governmental agencies and shall not be disclosed to volunteers or employees of non-governmental entities that may be optional partners in a local one-stop delivery system;

(F) The requesting agency must agree to share program-related performance information, for the same individual, with Oregon Employment Department staff; and

(G) There must be a written agreement among the local one-stop partners that provides for safeguarding of the disclosed information, prohibits re-disclosure of the information without the express consent of the department, and imposes sanctions for the unauthorized disclosure of confidential information.

(b) Job orders that are designated by the employer for "self-referral" may be shared freely among local one-stop partners without consent of the employer and without a written agreement among the local one-stop partners. Identifying information on job orders that are designated by the employer as "suppressed," meaning the employer wants referrals on the job order to be screened by the department, may not be shared with one-stop partners. Partner agencies are required to refer clients or customers to the department for referral on "suppressed" job orders. The department may share "suppressed" job orders with local one-stop partners if there is a written agreement among the local one-stop partners that establishes, to the satisfaction of the department Director, how the job order system will be managed in a one-stop center and that assures employers quality referrals on "suppressed" job orders, including coordination of referrals by partner agencies.

(c) Information necessary in providing services to employers for marketing, visitation, or promoting the one-stop system, including details such as who to contact, planned contact schedules, and results of contacts and telephone calls, can be shared for coordinated employer relations efforts in a one-stop system if there is a written agreement with the local one-stop partners that describes the needs, the process, and expectations of the local employer relations program. The agreement should also provide for steps in safeguarding the confidential employer information and assurance that a high level of customer service is provided to the employer in the different activities offered by the local one-stop system. This subsection does not authorize disclosure of employer wage records and employer tax data.

(d) The department is authorized to disclose job seeker information to partners in the one-stop system under the following conditions:

(A) The requesting agency is a required or mandatory one-stop partner as described in Section 121 of the federal Act or ORS Chapter 411.935(2);

(B) There is a written agreement with the individual one-stop partner describing how the information will be used, that provides for the safeguarding of the information, and imposes sanctions for the unauthorized re-disclosure of the confidential information;

(C) The individual for whom data is requested must have been provided with full disclosure of how the information will be used and must have given informed consent for their information to be used;

(D) The disclosed information shall only be used for the purposes of "intake and referral," which would not include activities such as program eligibility or sanctions; and

(E) The information to be disclosed must be based on a "need to know" for job placement purposes by the one-stop partner. "Need to know" data would include a person's work history, education, training, and skill background as well as personal identification. This

subsection does not authorize disclosure of job referrals, job orders or unemployment insurance claims information.

(14) Oregon Employment Department staff is authorized to access confidential information only as needed to perform official duties. Oregon Employment Department staff is not authorized to access confidential information to satisfy curiosity, use the information for personal gain, or provide confidential information to friends or relatives or any unauthorized individual. Oregon Employment Department staff is prohibited, except as authorized under these rules, from disclosing confidential information to any individual who is not an employee or hosted worker of the department (including a spouse or relative) and shall not discuss confidential information among co-workers except as needed to perform the job. Disclosure or discussion of confidential information on personal time or in non-work settings is prohibited.

(15) Hosted workers are authorized to access confidential information only when there is a written agreement with the employing entity, or the hosted worker if there is no employing entity, that provides sanctions for the unauthorized disclosure of confidential information. Hosted workers must be under the functional control of Oregon Employment Department staff.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & ORS 657

Hist.: IDE 6-1980, f. & ef. 9-8-80; IDE 1-1981, f. & ef. 1-15-81; IDE 1-1982, f. & ef. 6-30-82; IDE 2-1984, f. & ef. 9-28-84; IDE 3-1985, f. & ef. 12-16-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00

471-010-0055

Sanctions for Unauthorized Disclosure or Rediscovery

(1) Any officer or employee of the Director of the department, who, except with authority of the director or pursuant to regulations, or as otherwise required by law, shall disclose confidential information under these rules, thereafter may be disqualified from holding any appointment or employment by the director.

(2) Any person or officer or employee of an entity to whom information is disclosed or given by the Employment Department pursuant to these rules, who divulges or uses such information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure, may be disqualified from holding any appointment or employment, or performing any service under contract, with the state agency employing that person or officer.

(3) Anyone who is not an employee of the State of Oregon who is authorized to access confidential information under a written agreement shall be subject to the sanctions specified in the agreement regarding unauthorized disclosures.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: IDE 6-1980, f. & cert. ef. 9-8-80; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00

471-010-0056

Hearing Transcripts

(1) When a timely application for review of a referee decision is filed with respect to any matter reviewable by the Employment Appeals Board, transcripts of testimony received in such hearings shall be made available to the parties in accordance with OAR 471-041-0055.

(2) When a timely petition for judicial review of a referee decision by the Court of Appeals is filed, transcripts of testimony received in such hearings shall be made available to the parties in accordance with the rules of the Court of Appeals.

(3) When neither a timely application or petition for review has been filed with the Employment Appeals Board or the Court of Appeals, and when the referee decision has become final, a transcript of testimony received in such hearing may be provided to any person who files a written request therefor with the Hearings Section and pays the required fee. The preparation of transcripts made available under sections (1) and (2) of this rule takes priority over preparation of transcripts under this section.

Stat. Auth. ORS 657.610

Stats. Implemented: ORS 657.275 & ORS 657.280

Hist.: 1DE 6-1980, f. & ef. 9-8-80; 1DE 1-1984, f. & ef. 3-21-84; ED 2-1987, f. & ef. 11-27-87; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; Suspended by ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00

471-010-0060

Reimbursable Expenses

The current Oregon Administrative Rules adopted by the Department of Administrative Services of the State of Oregon with respect to official travel and other reimbursable expenses and filed with the Secretary of State are adopted as the rules and regulations applicable to the Employment Department, except that in all cases in which there may be a conflict between these rules and the current rules and regulations promulgated by the United States Secretary of Labor as set forth in the **Bureau of Employment Security Manual** (Employment and Training Administration) governing official travel and reimbursable expenses, the rules and regulations as set forth in the **Bureau of Employment Security Manual** (Employment and Training Administration) shall prevail.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the agency.]

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657

Hist.: 1DE 150, f. & ef. 2-9-76; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96

DIVISION 20

EMPLOYMENT SERVICES

471-020-0005

Job Bank Participation

The Job Bank concept provides a central inventory of job opportunities available to those job seekers needing assistance; provides a central Control of referrals to employers; and facilitates the reduction of the duplication of contacts by agencies with employers in this area. The Job Bank System generates a daily listing of all job orders to be distributed to Oregon Employment Department Offices and participating agencies each morning except Saturdays, Sundays, and holidays. Applicant referrals are controlled to eliminate over referral to employers. The Job Bank Book, consisting of microfiche of the daily listing, is updated each night to reflect changes in order status and to accommodate additional new orders. Placement verification is controlled to minimize employer contact. Applicants and employers are provided timely recruitment and placement service.

(1) Participants having access to Job Bank System must agree that:

(a) No fee will be charged for referral to an opening in the Job Bank Book.

(b) Applicants meeting the employer's job order specifications will be referred to the nearest office of the Employment Department for determination of referral possibilities. All referrals to employers will be made by the Employment Department.

(c) The Job Bank Book is designed as a listing of open job orders on which referrals through the Employment Department can be made and will be used only for this purpose.

(d) All job orders will be referred to the Oregon State Employment Service through its reporting system for inclusion in the Job Bank Book on a daily basis or at such other times as may be required by the Director. Furnish such reports on forms provided by the Director as may be required for the orderly administration of the Job Bank System.

(e) They will abide by the state and federal laws relating to Equal Employment Opportunity including discrimination on account of age, sex, race, creed, or color.

(f) Information furnished from the records of the Employment Service to Job Bank participants shall be kept confidential and may not be released in any manner except to the extent necessary for their participation in the Job Bank program.

(2) Application for Job Bank participation must be in writing and cover the following items:

- (a) Name and type of organization;
- (b) Willingness to comply with the above regulations;
- (c) Reasons for participation in system;

(d) Proposed use of Job Bank Book;

(e) Signed by principal person of authority on behalf of applicant.

(3) In addition to formal application, it will be necessary for all Job Bank participants to purchase microfiche viewing equipment in order to read the Job Bank Book. The Employment Service may request reimbursement for the fiche and their delivery cost. Used fiche copies must be returned to the Employment Service.

(4) Uses of the Job Bank Book inconsistent with the policies, procedures, and purposes specified in these regulations shall be grounds for refusal to grant an application or discontinuance of a previously approved applicant's participation in the Job Bank System.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.705 & ORS 657.720

Hist.: 1DE 150, f. & ef. 2-9-76

471-020-0010

Definitions

As used in OAR 471-020-0010 to 471-020-0030, unless the context requires otherwise:

(1) "Active Status" means a period beginning when an individual is eligible to receive and is being paid unemployment insurance benefits pursuant to OAR 471-030-0036, and ending at Saturday midnight of the third week following the week in which the most recent benefit check was issued to the individual.

(2) "Enrollment" means entry of information provided under ORS 657.159, 657.715, 657.720 or OAR 471-020-0020 into the Employment Services job selection data system.

(3) "Job attached" means:

- (a) An individual with a definite return-to-work date; or
- (b) An individual who obtains all work assignments through a closed union hiring hall.

(4) "Matching process" means the process of comparing an individual's knowledge, skills and abilities for referral to an employer's job opening.

(5) "Qualified" means the individual's skills and experience meet or exceed the employer's job requirements.

(6) "Profiled" means the application of a ranking system, using criteria established in OAR 471-030-0034, to establish the relative likelihood of a claimant exhausting the maximum benefit amount available in a benefit year.

(7) "Reemployment Services" may include any of the services listed in ORS 657.156(1)(b) and includes subsidized employment.

(8) "Subsidized" means a job order or employment that meets the requirements of ORS 411.892.

(9) "Suitable" means the factors listed in ORS 657.190 and 657.195.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.156 & ORS 657.159

Hist.: ED 1-1999(Temp), f. & cert. ef. 1-8-99 thru 7-6-99; ED 4-1999, f. 6-29-99, cert. ef. 7-4-99

471-020-0020

Claimant Reemployment Services

(1)(a) Except for individuals identified in OAR 471-020-0021, all unemployment insurance claimants shall submit such information as may be required by the Oregon Employment Department to carry out job placement services for the individual including, but not limited to, the individual's job qualifications, training and experience. Such information shall be entered into the Employment Services job selection data system concurrent with, or as soon as possible following, the filing of an initial claim for unemployment insurance benefits. Entry of this information shall constitute enrollment.

(b) Individuals identified in OAR 471-020-0021 shall be provided information about accessing reemployment services and may volunteer for placement in subsidized JOBS Plus employment pursuant to subsection (5) of this rule.

(2) All unemployment insurance claimants are provided access to reemployment services.

(a) Following enrollment, all unemployment insurance claimants who are not job attached shall be profiled in accordance with the provisions of ORS 657.156 to identify claimants who are likely to exhaust benefits. Local Employment Department offices

shall be provided a list of profiled claimants. Profiled claimants shall be considered for reemployment services in rank order, as resources permit.

(b) Any unemployment insurance claimant shall be selected for reemployment services, as resources permit, if the individual:

(A) Appears on the list of profiled claimants; or

(B) Appears on the list of claimants who have claimed benefits for eight consecutive weeks.

(3) Except for individuals identified in OAR 471-020-0021, the Employment Department shall use the matching process to refer claimants, who are not job attached, to available, suitable subsidized and unsubsidized job orders. A claimant matched to a job order shall be referred, subject to any applicable state or federal requirements and the employer's referral requirements, to the employer filing the job order if the claimant is among the qualified job seekers matched to the job order and the job is determined to be suitable for the claimant.

(4) All unemployment insurance claimants, who are not job attached, shall continue to be matched and referred to available, suitable subsidized and unsubsidized openings while in active status.

(5) All unemployment insurance claimants, whether job attached or not, may volunteer for placement in subsidized JOBS Plus employment. Any claimant volunteering for subsidized employment shall be promptly referred to any employer offering available, suitable subsidized employment.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.155, ORS 657.156 & ORS 657.159

Hist.: ED 1-1999(Temp), f. & cert. ef. 1-8-99 thru 7-6-99; ED 4-1999, f. 6-29-99, cert. ef. 7-4-99

471-020-0021

Exemptions from Enrollment

The following unemployment insurance claimants are not required to submit enrollment information to the Employment Department for job placement purposes:

(1) Individuals claiming against the State of Oregon but living outside of Oregon;

(2) Individuals on a temporary mass layoff from a single employer.

(3) Individuals claiming benefits through an approved shared work plan under the provisions of ORS 657.380; and

(4) Individuals claiming benefits for partial unemployment under the provisions of OAR 471-030-0060.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.155, ORS 657.156 & ORS 657.159

Hist.: ED 4-1999, f. 6-29-99, cert. ef. 7-4-99

471-020-0030

JOBS Plus Program

(1) As used in ORS 657.925(5) and (6), "JOBS Plus Program" means the processes used and services provided pursuant to OAR 471-020-0020.

(2) As used in ORS 657.925, "job referral process" means the processes set forth in ORS 657.159 and OAR 471-020-0020.

(3) As used in ORS 657.925, an "unemployment insurance recipient" or an "unemployment compensation recipient" is an individual who:

(a) Is an Oregon resident;

(b) Has a current Oregon benefit year as defined in ORS 657.010(3);

(c) Has a balance remaining on the current benefit year;

(d) Was paid benefits under ORS 657.155 for the most recent week claimed; and

(e) Is in active status as defined in OAR 471-020-0010.

(4) An unemployment insurance recipient or unemployment compensation recipient must meet the eligibility criteria set forth in section (3) above:

(a) On the date of referral to a JOBS Plus Program position; and

(b) On the date of hire into a JOBS Plus Program position.

(5) If an unemployment insurance recipient or unemployment compensation recipient accepts a JOBS Plus Program subsidized position, that individual's participation in the JOBS Plus Program

ends when the individual leaves or completes the JOBS Plus Program subsidized position.

(6) If an unemployment insurance recipient or unemployment compensation recipient has not accepted a JOBS Plus Program subsidized position, that individual's participation in the JOBS Plus Program ends when the individual no longer meets the criteria set forth in section (3) above.

(7) As used in ORS 657.925, an unemployment insurance recipient or unemployment compensation recipient has been referred to the JOBS Plus Program when the recipient has been advised of the mandatory requirements contained in and the availability of services set forth in OAR 471-020-0020.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.156, ORS 657.159 & ORS 657.925

Hist.: ED 1-1999(Temp), f. & cert. ef. 1-8-99 thru 7-6-99; ED 4-1999, f. 6-29-99, cert. ef. 7-4-99

DIVISION 30

UNEMPLOYMENT INSURANCE

Benefits and Claims

471-030-0005

Week Defined

(1) A "week" as defined in subsection (10) of ORS 657.010 shall end on Saturday except that where an individual is attached to a regular employer a week may consist of any seven consecutive days approved by the Director. The provisions of this section shall not be construed to allow benefits for a period of less than seven days or for the same period more than once.

(2) Except for purposes of computing total base year wages under ORS 657.150(2) and benefit entitlement under ORS 657.150(4), a week is within that calendar quarter which includes the greater part of the week.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.010(10)

Hist.: IDE 150, f. & ef. 2-9-76; IDE 1-1984, f. & ef. 3-21-84

471-030-0010

Assignment of Wages

For purposes of ORS 657.150(2) and (4) wages shall be assigned to the calendar quarter in which they are paid, in the same manner that taxes are payable pursuant to OAR 471-031-0070(1).

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.150(2) & ORS 657.150(4)

Hist.: IDE 1-1984, f. & ef. 3-21-84

471-030-0015

Social Security Account Number

(1) Each employee in employment subject to the Employment Department Law shall procure a Federal Social Security Account Number and report his number to every employer for whom he is engaged in employment.

(2) Employers shall furnish appropriate Social Security Application forms to each employee who does not have an account number.

(3) It shall be the responsibility of the employer that such applications are filed by each such employee within 30 days after the date on which employment begins.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657

Hist.: IDE 150, f. & ef. 2-9-76

471-030-0020

Retirement Pay, Allocation of Periodic and Lump Sum Payments

(1) For the purposes of ORS 657.205, the Director shall apportion lump sum payments on the basis of the individual's regular rate of pay for full-time employment. For the purposes of this section, full-time employment shall be considered 40 hours of work per week except in those industries, trades or professions where due to practice, custom or agreement the usual work week is other than 40 hours.

(2) Periodic payments paid in other than weekly installments shall be converted in such a way as to achieve the same results as if they were paid in weekly installments. Monthly payments shall be converted to equivalent weekly amounts by multiplying the monthly payments amount by the fraction 12/52 and rounding the result to the nearest multiple of \$1.

(3) An individual who elects to receive retirement benefits in a lump sum payment when the option exists to receive periodic payments during the individual's benefit year shall be considered eligible for periodic payments under ORS 657.205(1). Such lump sum payment shall be apportioned as provided in ORS 657.205(2) and section (1) of this rule and allocated beginning with the first week with respect to which the individual would have been eligible for a periodic payment.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.205
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 3-1980(Temp), f. 4-1-80, ef. 4-6-80; IDE 5-1980, f. 6-5-80, ef. 6-16-80; IDE 1-1984, f. & ef. 3-21-84; ED 1-1991, f. & cert. ef. 4-1-91

471-030-0021

Allocation of Wages

(1) When an individual is paid at irregular intervals as described in ORS 657.150(3), the individual shall be considered to have been paid on the first of the month for the time worked the previous month, except that where an agreement provides that the employer shall pay wages at some future date, the date specified by the agreement shall be used for base year wage allocation purposes.

(2) An individual who is paid at least once every 35 days is deemed to have been paid at regular intervals.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.150(3)
 Hist.: IDE 151, f. 9-28-77, ef. 10-4-77

471-030-0022

“Full-Time Work” Defined

“Full-time work,” for the purposes of ORS 657.100, is 40 hours of work in a week except in those industries, trades or professions in which most employers due to custom, practice, or agreement utilize a normal work week of more or less than 40 hours in a week.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.100
 Hist.: IDE 151, f. 9-28-77, ef. 10-4-77

471-030-0023

“Incapable of Work”

As used in ORS 657.170, “incapable of work” means inability to engage in any gainful occupation solely because of physical or mental defect, disease or injury as verified in writing by a licensed medical or therapeutic practitioner, or other evidence satisfactory to the Director.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.170
 Hist.: IDE 3-1981, f. & ef. 2-16-81

471-030-0025

Claimant’s Responsibilities

With all claims, an individual shall furnish the Director with their social security number and other information required for processing their claim. Such information may include, but is not limited to, information pertaining to prior work history, separations from work, current work activity and earnings, licenses or permits held, self employment, entitlement to pay and allowances of various kinds, work seeking activity, working restrictions, and working ability. With respect to work activity or self employment during any week claimed, the information required may include the type of work activity, the amount of time devoted to such activity, the gross and net amount of compensation, remuneration, wages, commission, salary, or income, if any, received or expected to be received, and any other factors material to a determination of eligibility for benefits.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 3-1985, f. & ef. 12-16-85

471-030-0030

Applications by Mail

(1) An individual unable to appear in person at an office of the Employment Department or before an authorized agent thereof to file a claim for benefits may send a written notice to the Employment Department setting forth his name, Social Security Account Number, and mailing address, stating that he desires to file a claim for benefits.

(2) Upon receipt of such notice, the Director shall allow such mail application to constitute a claim for benefits, provided the individual shall thereafter, at a time and in a manner specified by the Director, complete such claim for benefits on forms furnished by the Director.

(3) The date of any claim for benefits allowed under the provisions of this section shall be the postmarked date on the mail application or, in the absence of a postmark date, the most probable date of mailing as determined by the Director.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.260
 Hist.: IDE 150, f. & ef. 2-9-76

471-030-0034

Reemployment Service Assistance and Eligibility

(1) In determining under ORS 657.156 whether an individual is likely to exhaust benefits and will need reemployment service assistance to make a successful transition to new employment the Employment Department may consider, but is not limited to, the following criteria:

- (a) The individual’s job tenure in his/her primary occupation and industry;
- (b) The individual’s education level;
- (c) The individual’s reemployment rights (recall status) with his/her regular employer;
- (d) Employment conditions in the individual’s primary occupation and industry;
- (e) The insured unemployment rate in the locality where the individual resides or seeks work.

(2) “Justifiable cause” under ORS 657.156 means such circumstances that a reasonable and prudent person exercising ordinary common sense would fail to participate in reemployment services. For an individual with a permanent or long-term “physical or mental impairment” (as defined at **29 CFR § 1630.2(h)**) justifiable cause for failure to participate in reemployment services is such that a reasonable and prudent person with the characteristics and qualities of such individual, would fail to participate.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.156
 Hist.: ED 1-1997, f. 9-23-97, cert. ef. 9-29-97

471-030-0035

Work Registration

(1) A claimant may fulfill the “registered for work” requirements of paragraph (a) of subsection (1) of ORS 657.155 by application for benefits and completion of such forms as directed by the Director or by filing a claim by mail in accordance with the provisions of OAR 471-030-0030.

(2) The provisions of this rule shall not apply to an individual claiming benefits as a “partially unemployed individual.”

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.155
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 2-1986, f. & ef. 4-14-86

471-030-0036

Eligibility Factors

(1) In considering suitable work factors under ORS 657.190 and for purposes of determining eligibility under ORS 657.155(1)(c), the Director may require an individual to actively seek the type of work the individual is most capable of performing due to prior job experience and training except that:

(a) If an individual is unable to secure the individual’s customary type of work after contacting the potential employers in the labor market where benefits are being claimed, the Director may require the individual to seek less desirable but similar work or work

of another type which the individual is capable of performing by virtue of experience and training.

(b) If the type of work an individual is most capable of performing does not exist in the labor market where the individual is claiming benefits, the Director may require the individual to seek any work that exists in the labor market for which the individual is suited by virtue of experience and training.

(c) After the individual has contacted the potential employers in the labor market where benefits are being claimed and is still unable to obtain work as described in (1)(a) and (b) of this section, the Director may require the individual to further expand work-seeking activities.

(2) For the purposes of ORS 657.155(1)(c), an individual shall be considered able to work in a particular week only if physically and mentally capable of performing the work he or she actually is seeking during all of the work week customary for the type of work being sought except:

(a) An occasional and temporary disability for less than half of a customary work week shall not result in a finding that the individual is unable to work for that week; and

(b) An individual with a permanent or long-term "physical or mental impairment" (as defined at **29 CFR §1630.2(h)**) which prevents the individual from working full time or during particular shifts shall not be deemed unable to work solely on that basis so long as the individual remains available for some work.

(3) For the purposes of ORS 657.155(1)(c), an individual shall be considered available for work if, at a minimum, he or she is:

(a) Willing to work full time, part time, and accept temporary work opportunities, during all of the usual hours and days of the week customary for the work being sought, unless such part time or temporary opportunities would substantially interfere with return to the individual's regular employment; and

(b) Capable of accepting and reporting for any suitable work opportunities within the labor market in which work is being sought, including temporary and part time opportunities; and

(c) Not imposing conditions which substantially reduce the individual's opportunities to return to work at the earliest possible time; and

(d) Physically present in the normal labor market area as defined by section (5) of this rule, every day of the work week customary for the work being sought, unless:

(A) The individual is actively seeking work outside his or her normal labor market area; or

(B) The individual is infrequently absent from the normal labor market area for reasons unrelated to work search, for less than half of the work week customary for the work being sought, and no opportunity to work or referral to work was missed by such absence.

(e) However, an individual with a permanent or long-term physical or mental impairment (as defined at **29 CFR §1630.2(h)**) which prevents the individual from working full time or during particular shifts shall not be deemed unavailable for work solely on that basis so long as the individual remains available for some work.

(f) An individual will be considered not available for work if he or she fails or refuses to seek the type of work required by the Director pursuant to section (1) of this rule.

(g) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (f), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) shall be considered available for work only during weeks in which the individual is enrolled in and participating in a recognized drug or alcohol treatment program if such participation was a condition in the determination to allow benefits. This provision does not apply if the individual has satisfactorily completed the course of treatment in accordance with the terms and conditions of the recognized treatment program.

(A) An individual is participating when engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(B) A recognized drug or alcohol rehabilitation program is a program authorized and licensed under the provisions of OAR Chapter 415.

(4) For purposes of ORS 657.155(1)(c) an individual is active-seeking work when doing what an ordinary and reasonable person would do to return to work at the earliest opportunity. In determining whether an individual is conducting an active search for work, the Employment Department may consider among other factors, length of unemployment, economic conditions in the individual's labor market and prospective job openings, weather conditions affecting occupations or industries, seasonal aspects of the individual's regular occupation, expected date of return to work with regular employer or in regular occupation, seniority status of individual, registration with a union hiring hall and normal practices for obtaining the type of work which the individual is seeking pursuant to section (1) of this rule.

(5)(a) An individual's normal labor market shall be that geographic area surrounding the individual's permanent residence within which employees in similar circumstances are generally willing to commute to seek and accept the same type of work at a comparable wage. The geographic area shall be defined by local employees of the Employment Department, based on criteria set forth in this section;

(b) When an individual seeks work through a union hiring hall, the individual's normal labor market area for the work sought is the normal referral jurisdiction of the union, as indicated by the applicable contract.

(6) Nothing in this rule shall prohibit the individual from seeking work in other labor market areas in this or any other state. The geographic area shall be defined by local office employees of that State Employment Security Agency, based on the criteria outlined in section (5) of this rule as though the individual maintained a permanent residence in that labor market.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.155

Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 4-1979(Temp), f. & ef. 7-5-79; 1DE 5-1979, f. & ef. 8-27-79; 1DE 1-1982, f. & ef. 6-30-82; ED 2-1992, f. & cert. ef. 6-29-92; ED 5-1994(Temp), f. 10-13-94, cert. ef. 10-16-94; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97

471-030-0037

Prevailing Rate of Pay

(1) For the purposes of ORS 657.176(2)(d), work is not suitable if the rate of pay is ten percent or more below that generally prevailing for similar work in the labor market area. The rate of pay generally prevailing will be determined by employees of the Employment Department local office using at least two sources of information about pay in the labor market area. However, such prevailing rate of pay determination is subject to review and modification upon presentation of satisfactory evidence.

(2) In applying the provisions of ORS 657.176(2)(e), and for the purposes of ORS 657.195(1)(b), if inadequate rate of pay was one of the reasons for refusing to accept new work, the work is unsuitable if the rate of pay is "substantially less favorable" than that generally prevailing for similar work in the locality. The rate of pay will be deemed "substantially less favorable" if it is ten percent or more or more below that generally prevailing for similar work in the labor market area. The rate of pay generally prevailing for similar work will be determined by employees of the Employment Department local office using at least two sources of information about pay in the labor market area. However, such prevailing rate of pay determination is subject to review and modification upon presentation of satisfactory evidence.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.176(2)(d) & ORS 657.176(2)(e) & ORS 657.195(1)(b)

Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; ED 2-1991, f. & cert. ef. 10-14-91; ED 2-1992, f. & cert. ef. 6-29-92

471-030-0038

Work Separations, Job Referrals and Job Refusals

(1)(a) As used in ORS 657.176(2)(a), (b), and (c) and sections (1) through (5) of this rule the term "work" means the continuing relationship between an employer and an employee. With the exception of the provisions of ORS 657.221(2)(a), the date an individual is separated from work is the date the employer-employee relationship is severed. In the case of absence due to labor dispute, the

employee is separated from work on the date there is a complete disassociation from all participation in the labor dispute and no re-employment rights are claimed.

(b) As used in this rule, “wantonly negligent” means indifference to the consequences of an act or series of actions, or a failure to act or a series of failures to act, where the individual acting or failing to act is conscious of his or her conduct and knew or should have known that his or her conduct would probably result in a violation of the standards of behavior which an employer has the right to expect of an employee.

(2) The distinction between voluntary leaving and discharge is:

(a) If the employee could have continued to work for the same employer for an additional period of time the separation is a voluntary leaving of work.

(b) If the employee is willing to continue to work for the same employer for an additional period of time but is not allowed to do so by the employer the separation is a discharge.

(3)(a) As used in ORS 657.176(2)(a) and (b) a willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee is misconduct. An act or series of actions that amount to a willful or wantonly negligent disregard of an employer’s interest is misconduct.

(b) Isolated instances of poor judgment, good faith errors, unavoidable accidents, absences due to illness or other physical or mental disabilities, or mere inefficiency resulting from lack of job skills or experience are not misconduct.

(c) The willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved is misconduct, so long as such failure is reasonably attributable to the individual.

(4) Good cause for voluntarily leaving work under ORS 657.176(2)(c) is such that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would leave work. For an individual with a permanent or long-term “physical or mental impairment” (as defined at **29 CFR §1630.2(h)**) good cause for voluntarily leaving work is such that a reasonable and prudent person with the characteristics and qualities of such individual, would leave work. For all individuals, the reason must be of such gravity that the individual has no reasonable alternative but to leave work.

(5) In applying section (4) of this rule:

(a) If an individual leaves work to accept an offer of other work good cause exists only if the offer is definite and the work is to begin in the shortest length of time as can be deemed reasonable under the individual circumstances. Furthermore, the offered work must reasonably be expected to continue, and must pay:

(A) An amount equal to or in excess of the weekly benefit amount; or

(B) An amount greater than the work left.

(b) Leaving work without good cause includes, but is not limited to:

(A) Leaving suitable work to seek other work;

(B) Allowing union membership to lapse;

(C) Refusing to join a bona fide labor organization when membership therein was a condition of employment;

(D) Leaving to attend school, unless required by law;

(E) Willful or wantonly negligent failure to maintain a license, certification or other similar authority necessary to the performance of the occupation involved, so long as such failure is reasonably attributable to the individual.

(c) Good cause for voluntarily leaving work while on layoff status shall be determined solely under the provisions of section (4) of this rule without regard to the provisions of subsections (a) and (b) of this section.

(d) Reduction in rate of pay: If an individual leaves work due to a reduction in the rate or pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the rate of pay generally prevailing for similar work in the individual’s normal labor market area.

(e) Reduction in hours: If an individual leaves work due to a reduction in hours, the individual has left work without good cause unless continuing to work substantially interferes with return to full

time work or unless the cost of working exceeds the amount of remuneration received.

(f) Where the gravity of the situation experienced by the individual results from his or her own deliberate actions, to determine whether good cause exists, the actions of the individual in creating the grave situation must be examined in accordance with the provisions of section (4) of this rule.

(g)(A) An individual who is a victim of domestic violence and whose health, safety or welfare is endangered by a person referred to in paragraph (B), has good cause for voluntarily leaving work if the individual has acted as a reasonable and prudent person of normal sensitivities and has pursued reasonable alternatives before voluntarily leaving work. Reasonable alternatives may include actions such as seeking a restraining order, relocating to a secure area and seeking reasonable accommodations from the employer such as a transfer within the company.

(B) For purposes of this section, ‘domestic violence’ means the physical injury, sexual abuse or forced imprisonment, or serious threat thereof, of a person by another who is related by blood, marriage, or significant relationship at the present or has been related or in the significant relationship at some time in the past, to the extent that the person’s health, safety or welfare is harmed or threatened thereby.

(6) As used in ORS 657.176(2)(d) and (e), the term “work” means the performance of services for which remuneration, compensation or wages is intended to be received or earned. Good cause as used in ORS 657.176(2)(d) and (e) is such that a reasonable and prudent person, exercising ordinary common sense, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. For an individual with a permanent or long-term “physical or mental impairment” (as defined at **29 CFR §1630.2(h)**) good cause is such that a reasonable and prudent person with the characteristics and qualities of such individual, would refuse to apply for available suitable work when referred by the employment office or accept suitable work when offered by the employer. In determining disqualification under this section, consideration shall be given to suitable work factors and exceptions as set forth in ORS 657.190 and 657.195.

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 657.176, ORS 657.260, ORS 657.265 & ORS 657.610

Stats. Implemented: ORS 657.176

Hist.: IDE 1-1979(Temp), f. & ef. 4-30-79; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1984, f. & ef. 3-21-84; IDE 2-1986, f. & ef. 4-14-86; ED 5-1992, f. & cert. ef. 12-14-92; ED 2-1993(Temp), f. & cert. ef. 8-12-93; ED 4-1993, f. & cert. ef. 11-22-93; ED 6-1999, f. 9-23-99, cert. ef. 9-26-99

471-030-0039

Administrative Decisions

(1) Administrative decisions made in compliance with the requirements of ORS 657.267 and ORS 657.268 shall be based upon reliable information, gathered as necessary by the authorized representative from the claimant, employers and other sources as appropriate.

(2) Written notice of administrative decisions shall be provided as required in ORS 657.267 and ORS 657.268 and shall be personally delivered or mailed to the parties or their authorized agents at their last address of record.

(3) Each administrative decision for which notice is required shall contain, as a minimum:

(a) Identification of the parties;

(b) Identification of the issues, laws and rules involved;

(c) Facts, reasoning and conclusions necessary for clarity and understanding;

(d) A statement allowing or denying benefits;

(e) The date of the decision;

(f) The date the decision becomes final; and

(g) A statement of appeal rights and procedures.

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 - ORS 657.270, ORS 657.335, ORS 657.610, ORS 729 & OL 1993

Stats. Implemented: ORS 657.267, ORS 657.268 & ORS 657

Hist.: IDE 5-1979, f. & ef. 8-27-79; IDE 4-1983(Temp), f. & ef. 9-28-83; IDE 1-1984, f. & ef. 3-21-84; ED 4-1994, f. & cert. ef. 9-2-94

471-030-0040**Initial, Additional, and Reopened Claims**

(1) As used in these rules, unless the context requires otherwise:

(a) "Claimant" means an individual who has filed an initial claim, additional claim, or reopened claim for unemployment insurance purposes and this filing is within a benefit year or other eligibility period;

(b) An "initial claim" is a new claim which is an application by a claimant to establish a benefit year and to obtain a determination of weekly and maximum benefit amounts as defined in subsection (4) of ORS 657.150;

(c) An "additional claim" is a claim certification which reactivates a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) A "reopened claim" is a certification which reactivates a claim during an existing benefit year or other eligibility period and certifies to the continuation of a period of unemployment for which the claimant did not file timely continued claims pursuant to the provisions of OAR 471-030-0045 and during which the claimant remained unemployed since last reporting on this claim.

(2) An initial, additional, or reopened claim must be filed prior to or during the first week of any series of one or more weeks for which benefits, waiting week credit, or non-compensable credit is claimed and prior to or during the first week of any subsequent series thereafter. However, if the Director finds the claimant had good cause for failure to file an initial, additional or reopened claim, the claim may be backdated, up to a maximum of 14 days from the date of request for backdating, subject to the provisions of section (3) of this rule.

(3) "Good Cause," as used in this rule, exists when it is established by satisfactory evidence that factors or circumstances beyond the reasonable control of the claimant caused the delay in filing. The initial, additional or reopened claim must be filed either in person or by mail within seven days following the date determined by the Director to be the date such factors or circumstances no longer exist. However, good cause shall be found in all cases when a request for backdating of an additional or reopened claim is made within seven days of the end of the week to which backdating is being requested.

(4) Notwithstanding the provisions of section (2) of this rule, if a claimant has been directed to make continued claim reports on a:

(a) Weekly basis, a series of claimed weeks shall not be considered interrupted necessitating the filing of a reopened claim solely because of a failure to file a timely continued claim for one week, provided the untimely continued claim is filed not more than 14 days following the end of the week claimed;

(b) Biweekly basis, a series of claimed weeks shall not be considered interrupted necessitating the filing of a reopened claim solely because of a failure to file a timely continued claim for one report period, provided the untimely continued claim is filed not more than 14 days following the end of the report period;

(c) Biweekly basis, an additional claim may be backdated, provided the claimant filed an initial, additional, reopened, or continued claim during the report period immediately preceding the report period in which the backdated additional claim is requested.

(5) A claimant may fulfill initial, additional, or reopened claim filing requirements by appearing at a local office and completing such forms as directed by the Director or by filing a claim by mail as provided in OAR 471-030-0030, or by such other method as may be approved by the Director.

(6) The date of filing of any initial, additional, or reopened claim shall be the date of the claimant's first application at a local office, the postmarked date of the first mail application or, in the absence of a postmark date, the most probable date of mailing as determined by the Director.

(7) The provisions of this section shall not apply to an individual claiming benefits as a "partially unemployed individual."

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.260

Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 1-1982, f. & ef. 6-30-82; ED 1-1987, f. & ef. 1-12-87

471-030-0042**Good Prospects**

In applying the provisions of ORS 657.325(8), an individual has good prospects for obtaining work if the Director finds that the individual could be reasonably expected to obtain work in the individual's customary occupation within four weeks from the week-ending date of the week in which the job referral or job offer was made.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.325(8)

Hist.: IDE 5-1981(Temp), f. 4-3-81, ef. 4-5-81; IDE 7-1981, f. 10-1-81, ef. 10-1-81 & 10-4-81; IDE 1-1982, f. & ef. 6-30-82

471-030-0043**Customary Occupation**

In applying the provisions of ORS 657.325(8), customary occupation means any work that the individual is capable of performing based on experience and training with respect to the individual's work history during the most recent three-year period prior to the failure to accept an offer of or referral to a job.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.325(8)

Hist.: IDE 6-1981(Temp), f. & ef. 4-10-81; IDE 7-1981, f. 10-1-81, ef. 10-1-81 & 10-4-81; IDE 1-1982, f. & ef. 6-30-82

471-030-0045**Continued Claims**

(1) As used in these rules, unless the context requires otherwise:

(a) "Continued Claim" means an application which certifies to the completion of one or more weeks of unemployment and requests benefits, waiting week credit, or non-compensable credit for such week or weeks;

(b) A "non-compensable credit week" is a week of unemployment for which benefits shall not be allowed but which may qualify as a week allowable in satisfaction of a disqualification as provided in ORS 657.215;

(c) "Report period" means a series of two or more complete weeks designated by the Director as the maximum number of weeks for which an individual may file a timely continued claim when reporting in accordance with the requirements of section (3) of this rule.

(2) A claimant, in order to obtain benefits, waiting week credit, or non-compensable credit for a week of unemployment, must file a continued claim for the week in accordance with prescribed instructions for telephone reporting or on forms approved by the Director.

(3) As directed by the Director, a continued claim shall be filed either by telephone, in person or by mail at a specified time and on a specified day within 45 days following the end of the week or the report period for which benefits, waiting week credit, or non-compensable credit, or any combination of the foregoing is claimed. However, if the Director finds the claimant has good cause for failure to file a timely continued claim in accordance with instructions, the reporting schedule may be modified or extended.

(4) The Director shall, with respect to individual claimants or groups of claimants, direct that the filing of continued claims shall be performed on a weekly or biweekly reporting schedule, or on any other schedule appropriate to existing facilities and conditions.

(5) "Good Cause," as used in section (3) of this rule, exists when it is established by satisfactory evidence that factors or circumstances beyond the reasonable control of the claimant caused the late filing. The continued claim must be filed by telephone, in person or by mail within seven days following the date determined by the Director to be the date such factors or circumstances no longer exist.

(6) The provisions of this rule shall not apply to an individual claiming benefits as a "partially unemployed individual."

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 - ORS 657.270, ORS 657.335, ORS 657.610, ORS 729 & OL 1993

Stats. Implemented: ORS 657.215 & ORS 657.260

Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 3-1981, f. & ef. 2-16-81; IDE 1-1984, f. & ef. 3-21-84; ED 4-1993, f. & cert. ef. 11-22-93; ED 4-1994, f. & cert. ef. 9-2-94

471-030-0046

Non-Cash Remuneration Applicable to Benefit Claims

(1) For the purposes of ORS 657.150(6), room and board and other non-cash remuneration provided to an individual in partial or full satisfaction for services performed, except in agricultural labor or domestic service, shall be considered as remuneration payable. The cash value of such remuneration shall be determined under the provisions of OAR 471-031-0055.

(2) "Agricultural labor," as used in this section, means agricultural labor as defined in ORS 657.045(3), (4), (5), and (6).

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.150(6)
 Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77

471-030-0048

Amended Monetary Determinations

(1) An individual who receives a monetary claim determination under ORS 657.266(2) may request that the determination be amended. The Director upon receipt of such a request will examine wage records submitted to the Department by employers in an attempt to locate wages and/or weeks of work alleged by the claimant to be missing. If the discrepancy involves only weeks or work and the claimant has provided documentary evidence of weeks sufficient to make the claim valid, the Director may issue a redetermination.

(2) If as the result of an investigation additional subject wages or weeks of work are made available which either allow a non-valid claim to become valid, or increase the weekly benefit amount of a valid claim, a redetermination will be issued.

(3) If as the result of an investigation all or part of the requested wages or weeks of work are not included in the claim determination, the Director will so notify the claimant. If the claimant requested an amended monetary determination as provided in section (1) of this rule within the period specified by ORS 657.266(5), such notice will be given by a determination amending or affirming the initial determination. Such notice shall be subject to appeal as provided in ORS 657.266(5).

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.266
 Hist.: 1DE 2-1981(Temp), f. & ef. 2-16-81; 1DE 4-1981, f. & ef. 4-1-81; ED 2-1995, f. 8-29-95, cert. ef. 9-3-95

471-030-0049

Lost, Stolen or Destroyed Benefit Checks

The Director will proceed in the following manner when a benefit check has been lost, stolen or destroyed:

(1) If the check has been issued but not cashed and the claimant completes a sworn statement that the benefit check was lost, stolen or destroyed, the check will be reissued. If the original check and replacement check are both received and cashed by the claimant, the claimant shall be liable for repayment of the overpayment.

(2) If the check has been issued and cashed and it is alleged that the check was not signed by the claimant or the claimant's authorized agent, a determination will be made on the validity of the endorsement:

(a) If the endorsement is determined to be the claimant's, the Director will so notify the claimant by letter and no replacement check will be issued;

(b) If the endorsement is determined to be a forgery, a replacement check will be issued;

(c) The agency will so advise the State Treasurer of the forged check.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.255
 Hist.: 1DE 3-1981, f. & ef. 2-16-81

471-030-0050

Benefit Payments

Benefits shall be paid by check or other method as approved by the Director. Checks shall be mailed to the last known address of the claimant except that, when approved by the Director, checks may be personally delivered to the claimant through an Oregon State Employment Department office. Delivery may also be made to a person other than the claimant if such person presents a signed authorization from the claimant requesting that his check be delivered to

such person. Any person other than the claimant receiving a check under these circumstances shall sign an acknowledgement of receipt of such check and the authorization from the claimant shall be retained by the Employment Department. Nothing in this rule shall authorize the delivery of a benefit check in violation of ORS 657.855.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.255
 Hist.: 1DE 150, f. & ef. 2-9-76

471-030-0051

Cancellation of Overpayments, Tolerance Policy

(1) When any amount due to be repaid to the Director under the provisions of ORS 657.310, 657.315 or under any federal benefit or assistance program administered by the Employment Department is less than one dollar, such amount may be determined by the Director to be uncollectible and shall be canceled in accordance with the procedures in ORS 657.320.

(2) For the purposes of ORS 657.320(1), "the state maximum weekly benefit amount then in effect" means the state maximum weekly benefit amount in effect on the date three years after the date the decision establishing the improper payment became final.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.310, ORS 657.315 & ORS 657.320
 Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 5-1979, f. & ef. 8-27-79

471-030-0052

Satisfaction of Disqualifications

For purposes of ORS 657.215 any week of imposed disqualification may be satisfied by meeting all the eligibility requirements of this chapter except for the application to ORS 657.155(1)(e) of the disqualifying decision under ORS 657.215.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.215
 Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77

471-030-0053

Waiver of Overpayments

(1) Purpose: This rule establishes policy to be used when waiving overpayments pursuant to ORS 657.317(3).

(2) Definitions: For purposes of ORS 657.317(3):

(a) "Establishment" means the issuance of an administrative decision which would result in an overpayment under ORS 657.310 or ORS 657.315.

(b) "Recovery" means the recoupment of potential overpaid benefits.

(c) "Amount of the overpayment" means the accumulated amount of potentially overpaid benefits in a single benefit year resulting from the application of ORS 657.150(6) and/or ORS 657.150(7).

(3) In applying ORS 657.317(3):

(a) No waiver shall be granted if the overpayment is a result of willful misrepresentation or fraud as established in ORS 657.215.

(b) No waiver shall be granted if the overpayment results from a decision which has been issued and become final under Chapter 657.

(c) No waiver shall be granted if the overpayment results from the negotiation of an original and a replacement check which were issued for the same period pursuant to OAR 471-030-0049.

(4) The determination to waive overpayments in accordance with the provisions of ORS 657.317(3) and this rule shall be made by employees authorized by the Manager of Benefits.

Stat. Auth.: ORS 105 Sec. 7, ORS 183, ORS 657.610, ORS 657.266, ORS 657.317 & ORS 657.270
 Stats. Implemented: ORS 215
 Hist.: ED 2-1995, f. 8-29-95, cert. ef. 9-3-95

471-030-0055

Continuous Jurisdiction

(1) In accordance with the provisions of subsection (2) of ORS 657.290, the following employees are designated by the Director as having the authority to act for and in the name of the Director in matters of reconsideration and correction of decisions and claims, to the full extent provided in subsections (1) and (2) of ORS 657.290:

- (a) Administrator for Programs and Field;
- (b) Manager of Benefit Services.

(2) If the Director finds, as new facts not previously known to the Director or the designees specified in section (1) of this rule, that a claimant or an employing unit has suffered or would suffer substantial adverse effect because of:

(a) Misinformation provided to such party by an employee of the Employment Department; or

(b) Improper application of Employment Department Law or administrative rules by an employee of the Employment Department, the Director, or one of the designees specified in section (1) of this rule, may take appropriate action to restore to the injured party all rights and benefits which were improperly denied.

(3) Notice of action taken in accordance with the provisions of section (2) of this rule shall be provided to all other parties who may suffer substantial adverse effect as a result of the correcting action taken. Such notice shall be subject to hearing, review and appeal in accordance with ORS 657.265 to 657.282.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.290

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 5-1979, f. & ef. 8-27-79; 1DE 1-1984, f. & ef. 3-21-84; 1DE 2-1984, f. & ef. 9-28-84; ED 1-1987, f. & ef. 1-12-87; ED 5-1992, f. & cert. ef. 12-14-92

471-030-0057

Payment of Benefits Due a Deceased Person

(1) Any individual who requests receipt of benefits due a deceased person in accordance with ORS 657.255(2) will be required by the Director to complete a notarized affidavit attesting to the death of the claimant and to the individual's relationship to the claimant.

(2) If there is no surviving spouse and benefits are requested by one or more surviving children, the child requesting the benefits must furnish the Director, in addition to the affidavit required in section (1) of this rule, with statements signed by each of the other surviving children authorizing payment to the petitioning child. The statement(s) may be waived if the petitioner can demonstrate to the satisfaction of the Director that there are no other surviving children or that any other surviving child or children cannot be located.

(3) If there is no surviving spouse and no surviving children and benefits are requested by either the claimant's mother or father, the petitioner must furnish the Director, in addition to the affidavit required in section (1) of this rule, a signed statement by the other parent authorizing payment to the petitioning parent. The statement may be waived if the petitioner can demonstrate to the satisfaction of the Director that the other parent is deceased or cannot be located.

(4) No benefit checks will be reissued to survivors other than those listed in sections (1), (2), or (3) of this rule. In the absence of a valid petition, the benefit check(s) will be canceled and the monies permanently returned to the benefit fund.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.255

Hist.: 1DE 3-1981, f. & ef. 2-16-81; 1DE 1-1984, f. & ef. 3-21-84

471-030-0060

Procedure for Payment of Benefits for Partial Unemployment

(1) As used in these rules, a partially unemployed individual is one who:

(a) Has been working full-time and remains attached to their usual and regular employer;

(b) Now works some but less than their customary full-time hours for such employer because of lack of full-time work;

(c) Has earnings less than their weekly benefit amount; and

(d) Expects to return to full-time work for such employer.

(2) A "Notice and Verification of Partial Unemployment" is a form furnished or approved by the Employment Department which sets forth the procedures for filing unemployment insurance claims during periods of partial unemployment and makes provisions for both employer and worker certifications to facts material to a determination of eligibility for benefits.

(3) In order to claim benefits for a week of partial unemployment, an individual need not be registered for work but must:

(a) Within 30 calendar days after termination of the week for which benefits are claimed, request from the employer or an office

of the Employment Department, a "Notice and Verification of Partial Unemployment" for such week; and

(b) Present or mail the completed notice to a local office of the Employment Department within 14 calendar days after receiving the form.

(4) A claimant who had been receiving benefits for partial unemployment may continue to file claims as a partially unemployed individual under this section for four consecutive weeks of total or part-total unemployment with no wages from the regular employer. The conditions of ORS 657.155 as respects registration shall not apply so long as the individual remains attached to the regular employer. If the claimant has no employment and no wages from such regular employer for a fifth consecutive week, he or she no longer qualifies as a partially unemployed individual. In order to continue to claim benefits, the individual must register for work and file continued claims in accordance with the provisions of OAR 471-030-0045. However, such claimant shall not be denied benefits for failure to register as stated herein if the failure was due to omission or neglect by an employee of the Employment Department to advise the claimant of such requirement.

Stat. Auth.: ORS 657 & ORS 657.610

Stats. Implemented: ORS 657.255 & ORS 657

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; ED 2-1992, f. & cert. ef. 6-29-92

471-030-0065

Discretionary Filing Procedures

(1) Pursuant to the provisions of ORS 657.155(1)(a) and to support the policy of prompt payment of benefits when due, the Director may discretionarily authorize the use of special or alternative forms and procedures for filing unemployment insurance claims under any of the following conditions:

(a) Mass layoffs from employment;

(b) Irregular working schedules;

(c) Plant, factory, firm, or business closure;

(d) Extraordinary weather conditions;

(e) Damage or impairment to Employment Department facilities;

(f) Disaster;

(g) Petroleum fuel shortages; or

(h) Other unusual conditions.

(2) In the exercise of the Director's discretion the Director shall consider:

(a) The number of claimants and employing units affected;

(b) Travel, transportation, and mailing facilities;

(c) Frequency of and anticipated duration of periods of unemployment;

(d) Prospects of re-employment for unemployed workers;

(e) Labor organization involvement;

(f) Administrative expense and feasibility; and

(g) Any other factors that may be significant and material.

(3) When an official identified in section (4) of this rule finds that any of the conditions specified in section (1) of this rule exists, that official may:

(a) Waive the registration requirements of ORS 657.155 for up to four consecutive weeks for which benefits are claimed;

(b) Waive the initial, additional or reopened claim filing requirements of OAR 471-030-0040(2) to permit filing such claims in a week subsequent to the time period allowed in OAR 471-030-0040. The time extension is to be determined by the Director in a manner calculated to insure equity and provide prompt payment of benefits and may vary from one set of circumstances to another.

(4) The use of special forms and procedures as proposed by this rule may be authorized by the following employees only:

(a) Deputy Director;

(b) Administrator for Programs;

(c) Manager of Programs and Methods.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.255

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 5-1979, f. & ef. 8-27-79; 1DE 3-1981, f. & ef. 2-16-81; 1DE 1-1984, f. & ef. 3-21-84; 1DE 2-1984, f. & ef. 9-28-84; ED 1-1991, f. & cert. ef. 4-1-91

471-030-0075

“Reasonable Assurance” Defined

With respect to the application of ORS 657.167 and 657.221, “reasonable assurance” means a written contract, written notification, or any agreement, express or implied, that the employee will perform services in the same or similar capacity for any educational institution during a subsequent academic year or term or in the period immediately following a recess period.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.167 & ORS 657.221

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 152, f. 9-28-77, ef. 10-4-77; 1DE 1-1984, f. & ef. 3-21-84; 1DE 3-1985, f. & ef. 12-16-85

471-030-0076

Benefits for Athletes

(1) As used in ORS 657.186, “any services, substantially all of which consist of participating in sports or athletic events” means all services performed by an individual in any subject employment during his base year if such individual was engaged in remunerative sports or athletic events for 90 percent or more of the total time spent in subject employment during such base year.

(2) As used in this section, “participating in sports or athletic events” means any services performed in an athletic activity by an individual as:

- (a) A regular player or team member;
- (b) An alternate player or team member;
- (c) An individual in training to become a regular player or team member;

(d) An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

(3) The beginning and ending dates of any sport season and the beginning and ending dates of the time period between two successive sport seasons shall be determined by the Director after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending of a season and any other information bearing upon such determination.

(4) For the purposes of ORS 657.186, a reasonable assurance that an individual will perform services in sports or athletic events in a subsequent season is presumed to exist if:

- (a) The individual has an express or implied multi-year contract which extends into the subsequent sport season;
- (b) The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season;
- (c) There is reason to believe that one or more employers of participants in athletic events is considering or would be desirous of employing the individual in an athletic capacity in the subsequent sport season; and
- (d) The individual has not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.186

Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 5-1979, f. & ef. 8-27-79

471-030-0077

Benefits for Aliens

(1) With respect to the application of the provisions of ORS 657.184, any data or information required of an applicant to obtain verification as to the individual’s status as an alien or a citizen shall, on the initial claim application, be uniformly applied to all individuals applying for benefits or for a determination of benefit rights, regardless of ethnic, racial, or linguistic characteristics of the applicant.

(2) When the determination that benefits are not to be paid is based upon a finding that an individual does not meet the requirements of ORS 657.184, such findings must be supported by a preponderance of the evidence.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.184

Hist.: 1DE 151, f. 9-28-77, ef. 10-4-77; 1DE 5-1979, f. & ef. 8-27-79

471-030-0080

Professional Technical Training

(1) Professional technical training, as defined in ORS 657.335, shall not be approved by the Director unless the public or private institution, school, or agency offering such program is certified or licensed by the Oregon State Board of Education, the Superintendent of Public Instruction, Regional Workforce Investment Board, or other Oregon State agency authorized to grant such certification or license or an equivalent state agency in the state where the training is to be provided.

(2) Professional technical training shall not be approved by the Director if the Director finds that the planned curriculum of classes and course activity is less than the equivalent of full-time student status. The Director may waive this requirement when such requirement would be inconsistent with the policy set forth in ORS 657.337.

(3) To receive benefits for any week during professional technical training, a dislocated worker who is otherwise eligible for unemployment insurance benefits must:

(a) Submit a written application for approval of professional technical training on forms prescribed or approved for such purpose by the Director with a local office of the Employment Department within 90 days of:

- (A) Certification as a dislocated worker; or
- (B) Termination from the dislocating employment; or
- (C) The filing of a claim for unemployment insurance benefits;

and

(b) Submit to the Employment Department a timely claim for such week in accordance with procedures established in 471-030-0045(3) of these rules; and

(c) Submit to the Employment Department a statement signed by an authorized representative of the training facility which certifies that the claimant was satisfactorily pursuing the approved professional technical training during such week; and

(d) Be in attendance half or more of the scheduled class days during such week unless the days not in attendance will not prevent satisfactory completion of the approved professional technical training.

(4) Decisions of the Director to approve or disapprove an application for course approval or to discontinue such approval for one or more weeks during professional technical training or to approve or deny supplemental benefits under the provisions of ORS 657.335 through 657.360 shall be in writing, shall set forth the reasons therefor, and shall be served upon the claimant by personal delivery or by mailing to the claimant's last known address of record with the Employment Department.

(5) As used in ORS 657.335(1):

(a) "Eligible dislocated workers" includes any worker defined under Title IB of the Workforce Investment Act of 1998 (P.L. 105-220) as a "dislocated worker" including any worker fitting the definition of a "displaced homemaker" as contained in that Act.

(b) "Long-term unemployed" means unemployed from the dislocated occupation for at least 15 of the last 26 weeks or for at least 8 consecutive weeks immediately prior to application (including survival jobs during such period).

(6) In applying the provisions of ORS 657.340, the Director may approve a program of instruction, including transfer credit programs of instruction given at community colleges, leading toward a baccalaureate or higher degree or training that has for its purpose the preparation of persons for employment in occupations which require a baccalaureate or higher degree from institutions of higher education if:

(a) The individual does not have significant transferable skills for other occupations in the statewide labor market;

(b) Unless previously approved in accordance with the provisions of Title IB of the Workforce Investment Act of 1998 (P.L. 105-220), the individual is within 48 quarter credit hours (or the semester equivalent) from completing the baccalaureate or higher degree; and

(c) Completing the baccalaureate or higher degree offers the best chance of long term employment.

(7) As used in ORS 657.340(2), "attendance in professional technical training" means the period of time beginning with the referral of an individual to Career Assessment or an equivalent program,

when that program is offered in a locality, or when the individual is accepted into approved professional technical training, whichever event occurs first in time, and ends with satisfactory completion of the training program. The period of time defined in this section includes customary academic recesses for holidays and between academic terms but does not include the customary academic summer recess. For purposes of applying ORS 657.340(2), an individual may be determined not to be in "attendance in professional technical training" as defined in this section if the individual fails to demonstrate satisfactory progress and attendance as defined in section (3) of this rule or the individual fails to attend Career Assessment or an equivalent program when the individual has been referred to that program.

(8) As used in ORS 657.340(3), "terms and conditions" includes "benefit year" as defined in ORS 657.010(3). In applying the provisions of ORS 657.340(3), the benefit year of an eligible dislocated worker may be extended, whether or not the benefit year has expired, if the eligible dislocated worker has not filed a subsequent initial claim establishing a new benefit year.

(9) In applying the provisions of ORS 657.345(1), an individual who meets the definition of dislocated worker as defined in paragraphs (a), (b), (c) and (d) of ORS 657.335(1) or the Workforce Investment Act of 1998 (P.L. 105-220) shall be considered to have been identified as a dislocated worker. The determination that an individual meets the definition of dislocated worker may be made by the Employment Department for purposes of paying benefits under ORS 657.335 to 657.360.

(10) In determining entitlement to "financial assistance" as described in ORS 657.340(5), the term "eligible dislocated workers" does not include workers who were determined eligible for Trade Readjustment Assistance (TRA) or Trade Adjustment Assistance (TAA) under a Trade Act petition certified by the U.S. Department of Labor subsequent to December 31, 1989.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.335 - ORS 657.360
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 1-1983(Temp), f. & ef. 3-9-83; IDE 2-1983, f. & ef. 8-12-83; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-1991(Temp), f. & cert. ef. 12-30-91; ED 3-1992, f. & cert. ef. 6-29-92; ED 4-1992(Temp), f. & cert. ef. 10-19-92; ED 1-1993, f. & cert. ef. 3-22-93; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 5-2000(Temp), f. 10-6-00, cert. ef. 10-8-00 thru 4-6-01

471-030-0081

Relief of Charges to Employers

For the purposes of ORS 657.471(7)(b), the "most recent separation from such employer" means the latest separation from such employer at the time notice of an initial valid determination of a claim filed by an individual is mailed to the employer's last known address as shown by the records of the Employment Department.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.471(7)
 Hist.: IDE 151, f. 9-28-77, ef. 10-4-77

471-030-0082

Charge Relief for Part-Time Work

(1) For purposes of ORS 657.471(10)(a) and (c):

(a) "Part-time work" means hours of work which are less than full-time as defined in OAR 471-030-0022;

(b) "Substantially the same amount" means wages have been earned by the part-time employee, with respect to a week in the benefit year, in an amount equal to 90 percent or more of the claimant's average part-time weekly base year wage as determined in accordance with section (2) of this rule.

(2) A claimant's average part-time weekly base year wage shall be calculated by dividing the claimant's total base year part-time wages paid by the employer requesting relief of charges, by the total weeks of part-time work associated with such wages.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.471(10)
 Hist.: IDE 2-1984, f. & ef. 9-28-84

471-030-0095

Claim Cancellations

(1) An initial or amended determination may be canceled at any time provided the requirements of ORS 657.266(4) are met and the request for cancellation is made in writing.

(2) Requests for cancellation must be signed by the claimant or by an authorized agent of the claimant.

(3) Cancellation will be denied if benefits have been paid. Benefits have been paid if the claimant negotiates a benefit check or if the claimant's account in a bank or similar financial institution has been credited with one or more benefit payments.

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 - ORS 657.270, ORS 657.335, ORS 657.610 & OL 1993, Ch. 729
 Stats. Implemented: ORS 657.267(4)
 Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; ED 4-1994, f. & cert. ef. 9-2-94

471-030-0097

Labor Disputes

The term "labor dispute" as used in the Employment Department law means any concerted or deliberate action by two or more individuals or by an employing unit resulting in either a strike or lockout in which wages, hours, working conditions or terms or employment of the individuals are involved.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.200
 Hist.: IDE 4-1980(Temp), f. & ef. 5-16-80; IDE 7-1980, f. & ef. 11-3-80; IDE 1-1982, f. & ef. 6-30-82

471-030-0100

Maximum Benefit Amount

For purposes of ORS 657.176(4) the term "maximum benefit amount" shall be the amount of benefit entitlement established under ORS 657.150(5).

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.176(4)
 Hist.: IDE 8-1981, f. & ef. 11-2-81

471-030-0120

Jury Duty

An individual who is in all respects otherwise eligible for unemployment insurance benefits shall not, solely by reason of serving on a jury, be denied such benefits under the provisions of ORS 657.155(1)(c).

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.155(1)(c)
 Hist.: IDE 1-1982, f. & ef. 6-30-82

471-030-0130

Drug Adjudication Policy

(1) Purpose. For purposes of applying ORS 657.176, this rule establishes policy for adjudicating cases involving drug use and testing. It does not establish what employers may or may not do in their own businesses, but addresses only the payment or denial of benefits under Employment Department Law, ORS Chapter 657. This rule is an exception to OAR 471-030-0038 and is intended to be used to determine whether or not a disqualification is to be imposed when the evidence presents issues addressed in this rule.

(2) Policy Statement. Drug testing generally cannot demonstrate whether or not a person is impaired by drugs at the time of the test. However, drug testing conducted under proper procedures can indicate drug use. Workers who use drugs off the job are less productive, miss work more often, and have more on-the-job injuries than their co-workers who do not use drugs. Many employers have been required, by various state or federal laws or regulations, to adopt anti-drug policies. Drug testing remains an issue in the Oregon workplace. For these reasons, the Employment Department adopts this rule.

(3) Definitions. For the purposes of this rule:

(a) "Drug" means any controlled substance as defined in ORS 475.005.

(b) "Under the Influence" of a drug means the state of being affected or impaired by a drug.

(c) "Illegal Use of Drugs" means the use of drugs which are unlawful to possess or distribute under Oregon law. This term does not include the proper use of a drug taken under the supervision of a licensed health care professional and in accordance with the prescribed directions for consumption, or other uses authorized by Oregon law.

(d) "Fails a Drug Test" or "failing a drug test" means that the results of a drug test are positive and, for drugs or classes of drugs listed in Table A, the positive result must equal or exceed the applicable cut-off level listed. However, where a collective bargaining agreement, or employer policy determined proper under subsection (5)(c) of this rule, exists the positive result must equal or exceed the cut-off levels established in the agreement or employer policy. If no agreement or policy exists, the Table A levels apply.

(e) "Last Chance Agreement" means an agreement between an employer and an employee requiring certain conditions imposed by an employer, as a condition of the employee's continued employment, upon an employee who has tested positive for, has been shown to have illegally used, or who has admitted being under the influence of the illegal use of, drugs on the job.

(4) "Under the Influence of a Drug on the Job" An employee who is discharged or suspended as a result of being under the influence of the illegal use of drugs on the job is discharged or suspended for misconduct connected with work.

(5) "Reasonable Grounds for Drug Testing":

(a) An employer has reasonable grounds for drug testing when the employer has an objective reason to believe the employee is under the influence of the illegal use of drugs. The following provide examples of objective reasons for believing an employee is under the influence of the illegal use of drugs:

- (A) Bizarre behavior at work;
- (B) Substantial loss of productivity at work;
- (C) Repeated tardiness or absences from work;
- (D) Behavior which causes an on-the-job accident resulting in death or in an injury which requires medical attention or time off from work;

(E) Within the twelve month period prior to the test being under the influence of the illegal use of drugs on the job; or

(F) An admission by the individual that within the twelve month period prior to the test (s)he has illegally used drugs on the job.

(b) An employer has reasonable grounds for drug testing, including random, periodic or blanket testing, when the test is pursuant to a provision in the applicable collective bargaining agreement and the test has not been declared invalid by final arbitration.

(c) An employer has reasonable grounds for drug testing, including random, periodic or blanket testing, when the employer has a written policy on drug testing and has published or provided the policy to its employees at the time of hire or at least 30 days prior to testing, and:

(A) The employee, if affected or impaired at work by the illegal use of drugs, could or would pose a significant danger to himself or herself or others; or

(B) The employee, if affected or impaired by the illegal use of drugs at work, could or would pose a significant threat to public safety (e.g., commercial drivers or vehicle mechanics, air traffic controllers, persons who carry firearms on the job); or

(C) The testing is required by statute or governmental licensing or other regulations; or

(D) The nature of the job is inconsistent with illegal use of drugs on or off the job (e.g., police officers, prosecutors, drug rehabilitation counselors); or

(E) The job duties are such that if the individual is impaired (s)he could cause the employer significant economic harm; or

(F) The testing is conducted pursuant to a reasonable last chance agreement as described in section (9) of this rule.

(6) "Pre-employment Testing":

(a) A requirement that job candidates submit to a pre-employment drug test does not make the work unsuitable for purposes of ORS 657.176(2) or ORS 657.190.

(b) If, after being referred by the Employment Department, a claimant does not apply for otherwise suitable work because the employer requires a pre-employment drug test, the claimant has failed to apply for suitable work without good cause, unless the claimant is required to pay for costs associated with the drug test.

(c) If a claimant does not accept otherwise suitable work because he or she is required to take a pre-employment drug test, the claimant has failed without good cause to accept suitable work,

unless the claimant is required to pay for costs associated with the drug test.

(d) No test administered after the worker actually begins work (the performance of services) shall be considered a pre-employment test. Nor shall a job offer made contingent upon passing a drug test be considered a job offer under ORS 657.176.

(7) "Voluntary Leaving":

(a) An employer's requirement that an employee take a drug test at some time in the future does not provide good cause to voluntarily leave a job;

(b) An employer's requirement that an employee consent to future testing which is not imminent does not provide good cause to voluntarily leave a job;

(c) If an employer has reasonable grounds for drug testing and the employee quits rather than be tested, the employee has voluntarily left without good cause. However, if the reason the employee refused to be tested was due to the employee being required to pay for costs associated with the drug test, then the issue is to be resolved in accordance with OAR 471-030-0038(4);

(d) An employee who leaves work after submitting to a drug test at the employer's request has left without good cause unless:

(A) The employer required a drug test without reasonable grounds for drug testing; and

(B) The employee left knowing a discharge was imminent.

(e) When an employer has no reasonable grounds for drug testing and the employee leaves work rather than submit to the test, such leaving is with good cause.

(8) "Discharge and Suspension":

(a) If reasonable grounds for testing exist and an employee is discharged or suspended for refusing to take a drug test, then the employee is discharged or suspended for misconduct connected with the work;

(b) If reasonable grounds for testing exist and an employee is discharged or suspended for failing a drug test, then the employee is discharged or suspended for misconduct connected with work, unless the employee can show that the positive test did not result from the illegal use of drugs;

(c) When an employer has no reasonable grounds for drug testing, any discharge or suspension which is caused by the employer's requirement that an employee submit to a drug test is not for misconduct connected with work;

(9) "Last Change Agreements":

(a) For the purposes of unemployment insurance, a last chance agreement is reasonable if:

(A) The employee fails a drug test for illegal use of drugs when reasonable grounds for drug testing existed; or

(B) The employee has been shown to have engaged in the illegal use of drugs on the job or to have been under the influence of the illegal use of drugs on the job; or

(C) The employee admits to the illegal use of drugs on the job or to being under the influence of the illegal use of drugs on the job; and

(D) It imposes only fair conditions. Fair conditions include, but are not limited to, agreeing to remain drug free; attending, at reasonable cost to the employee, rehabilitation, an employee assistance program, or other similar program; submitting to random or periodic drug testing to demonstrate that the employee remains drug free; and paying a reasonable amount toward the costs of required drug tests, considering the frequency and total number of such tests.

(b) It is misconduct connected with work to refuse to enter into a reasonable last chance agreement.

(c) It is misconduct connected with work to violate a reasonable last chance agreement.

(d) An employee who voluntarily leaves work rather than enter into or comply with a reasonable last chance agreement has voluntarily left work without good cause.

(10) "Procedures for testing": For the results of drug testing to be considered in determining eligibility for unemployment insurance, when the first test is positive, a confirming test of a different type must be conducted to confirm the accuracy of the first test. If challenged, an employer must be able to show:

(a) That the results of the drug tests upon which the employer relied related to tests conducted on the sample(s) from the claimant; and

(b) That the test was conducted by a laboratory licensed pursuant to ORS Chapter 438 or, in the case of a test performed outside of Oregon, the test must have been conducted by a laboratory meeting the licensing requirements of the applicable jurisdiction.

Stat. Auth.: ORS 183, ORS 657.176 & ORS 657.610
 Stats. Implemented: ORS 657.176(9)
 Hist.: ED 1-1990, f. & cert. ef. 11-19-90; ED 2-1991, f. & cert. ef. 10-14-91; ED 2-1994, f. 8-22-94, cert. ef. 8-28-94

471-030-0135

Absence Due to Alcohol or Drug Use

For purposes of ORS 657.176(2)(f) and (g):

(1) "Controlled substance" means any substance as defined in ORS 475.005;

(2) "Documentation of program participation" means a signed statement by an authorized representative of the recognized program that the individual is engaged in a course of treatment;

(3) "Participation" means to be engaged in a course of treatment through a recognized drug or alcohol rehabilitation program;

(4) "Recognized alcohol rehabilitation program" means a program authorized and licensed under the provisions of OAR Chapter 415;

(5) "Recognized drug rehabilitation program" means a program authorized and licensed under the provisions of OAR Chapter 415.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.155 & ORS 657.176
 Hist.: ED 2-1997, f. 10-24-97, cert. ef. 11-3-97

471-030-0140

Alcohol Adjudication Policy

(1) **Purpose** — Pursuant to ORS 657.176, this rule establishes policy to be used when an employer discharges or suspends an employee for being under the influence of alcohol on the job. This rule is an exception to OAR 471-030-0038 and is intended to be used to determine whether or not a disqualification is to be imposed when the evidence presents issues addressed in this rule.

(2) **Testing** — For purposes of ORS 657.176 an employer may require a breathalyzer, blood alcohol, or similar test of an employee if there are reasonable grounds to believe the employee is under the influence of alcohol.

(3) **Under the Influence** — An employee is deemed under the influence of alcohol when the employee's blood alcohol content meets or exceeds the amount prescribed in a collective bargaining agreement, or, in the absence of a collective bargaining agreement, exceeds the amount prescribed in the employer's published work rules, or in the absence of either of the foregoing, meets or exceeds the amount prescribed in the Oregon Vehicle Code as constituting being under the influence of intoxicating liquor. In the absence of a test, an employee may be found to be under the influence of alcohol when there is clear observable evidence of intoxication.

(4) **Under the Influence on the Job** — An employee who is discharged or suspended as a result of being under the influence of alcohol while on the job, is discharged or suspended for misconduct connected with work.

(5) Last Chance Agreements:

(a) For the purposes of unemployment insurance, a last chance agreement is reasonable if:

(A) The employee has, within the previous 12 months, been found to be under the influence of alcohol as defined in section (3) of this rule when the employer had reasonable grounds for alcohol testing; or

(B) The employee has been shown to have engaged in the use of alcohol on the job or to have been under the influence of alcohol on the job; or

(C) The employee admits to the use of alcohol on the job or to being under the influence of alcohol on the job; and

(D) The last chance agreement does not impose any unfair conditions. Unfair conditions include, but are not limited to, interfering with the privacy of the employee's private property off the work site; requiring the employee to attend treatment although there is no show-

ing that he or she has a problem which currently requires treatment; or requiring the employee to attend and pay for a particular treatment when other similar treatment is available at a lower cost.

(b) An employee who refuses to enter into a reasonable last chance agreement has committed misconduct connected with work.

(c) An employee who violates a reasonable last chance agreement has committed misconduct connected with work.

(d) An employee who voluntarily leaves work rather than enter into, or comply with the terms of, a reasonable last chance agreement has voluntarily left work without good cause.

(6) **Procedures for Testing.** For the results of alcohol testing to be considered in determining eligibility for unemployment insurance, if challenged, an employer must be able to show:

(a) That the results of the alcohol test upon which the employer relied related to a test conducted on the sample from the claimant whose claim for benefits is at issue; and

(b) Such test must comply with ORS 659.225 and 659.227.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.176(9)
 Hist.: ED 1-1990, f. & cert. ef. 11-19-90; ED 2-1991, f. & cert. ef. 10-14-91; ED 1-1994(Temp), f. & cert. ef. 3-17-94; ED 2-1994, f. 8-22-94, cert. ef. 8-28-94; ED 2-1997, f. 10-24-97, cert. ef. 11-3-97; ED 2-1998(Temp), f. & cert. ef. 3-16-98 thru 9-4-98; ED 3-1998, f. 8-28-98, cert. ef. 9-4-98

471-030-0145

Use, Sale, Possession or Effects of Controlled Substances or Alcohol in the Workplace

(1) Violation of a reasonable employer policy. For purposes of ORS 657.176(9), when an individual is discharged or suspended as a result of failing to comply with a reasonable employer policy related to the use, sale, possession or effects of controlled substances or alcohol in the workplace, the individual has committed a disqualifying act and is not qualified to receive unemployment insurance benefits. When an individual refuses to apply for work when referred by the Employment Department, refuses to accept an offer of suitable work or quits work, rather than comply with a reasonable employer policy related to the use, sale, possession or effects of controlled substances or alcohol in the workplace, the individual has committed a disqualifying act and is not qualified to receive unemployment insurance benefits.

(a) Workplace. For purposes of ORS 657.176(9) and this rule, the word "workplace" means the employer's premises or any place at or in which an individual is performing services for the employer or otherwise is acting within the course and scope of employment.

(b) Sale, possession or use. An employer's policy prohibiting the sale, possession or use of alcohol or controlled substances in the workplace (except when possession or use is in accordance with the legal prescription of a health care professional) is a reasonable policy.

(c) Effects. An employer's policy related to the effects of controlled substances or alcohol in the workplace is reasonable if failure to comply with the employer's policy would result in a disqualification from unemployment insurance benefits based upon application of OAR 471-030-0130 or OAR 471-030-0140.

(d) Other policies. If the employer's policy is not specifically addressed in this rule, or in the provisions of OAR 471-030-0130 or OAR 471-030-0140, the employer's policy related to the use, sale, possession or effects of controlled substances or alcohol is reasonable if failure to comply with the employer's policy would result in a disqualification from unemployment insurance benefits based upon application of OAR 471-030-0038.

(2) Application of Employment Department law. (a) If the employer has no established policy regarding the use, sale or possession of controlled substances or alcohol the provisions of OAR 471-030-0038 apply.

(b) If the employer has no established policy regarding the effects of controlled substances or alcohol the provisions of OAR 471-030-0130 or OAR 471-030-0140 apply to the extent that the matter presents issues addressed in those rules. Otherwise, the provisions of OAR 471-030-0038 apply.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.176(9)
 Hist. ED 8-1996, f. 12-11-96, cert. ef. 12-16-96

471-030-0174

Child Support Intercept Appeals

(1) An individual who has had benefits withheld pursuant to ORS 657.780 shall have appeal rights from such action. Such appeal must be filed in writing within 20 days of the mailing of an affected benefit check and shall be confined to the issues provided in section (2) of this rule.

(2) A hearing in such cases shall be by a referee designated either by the Director or the Administrator for hearings. The hearing shall be conducted pursuant to OAR chapter 471, division 40, and shall be limited to the issues of the authority of the Employment Department to withhold and the accuracy of the amount so withheld, or either one.

(3) A decision of the referee shall become final on the date of notification or the mailing thereof to the Director and to the individual at the last-known address of record with the Director.

(4) Judicial review of decisions under this rule shall be as provided in ORS 183.480 for review of orders in contested cases.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.780

Hist.: IDE 2-1982, f. & ef. 12-8-82; IDE 3-1985, f. & ef. 12-16-85

471-030-0200

Precedent Decisions

Final orders of the Employment Appeals Board which have been certified pursuant to OAR 471-041-0150 shall be controlling in subsequent decisions of the Employment Department, unless modified on appeal or as otherwise provided by law. All such final precedent orders shall be published and distributed to the extent deemed necessary by the Director to ensure consistent application within the Department.

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 - ORS 657.270, ORS 657.335, ORS 657.610 & OL 1993, Ch. 729

Stats. Implemented: ORS 657.275 & ORS 657.685

Hist.: ED 4-1993, f. & cert. ef. 11-4-93; ED 4-1994, f. & cert. ef. 9-2-94

DIVISION 31

TAXES

471-031-0005

Payroll Records

(1) Every employing unit, as defined by ORS 657.020, shall maintain a payroll record of individuals performing services for it. The payroll record shall show the total payroll of the employing unit by calendar quarter and with respect to each individual shall maintain the following:

- (a) Name of individual;
- (b) Social Security Account number;
- (c) Total remuneration for each pay period, and total remuneration for all pay periods in each calendar quarter, showing separately:
 - (A) All wages not excluded by the Employment Department Law;
 - (B) All wages excluded by Employment Department Law;
 - (C) Cash value of all non-cash remuneration of any nature.
- (d) Date of each pay period;
- (e) Date individual was hired, rehired, or returned to work after vacation, illness, temporary layoff, or other;
- (f) Date individual was terminated;
- (g) Number of hours worked in each calendar quarter.

(2) In addition, an employing unit shall maintain records with respect to each calendar quarter, showing:

- (a) Date each pay period ends within such calendar quarter;
- (b) Total wages, by pay periods, ending within such calendar quarter;
- (c) Total number of employees in each pay period.

(3) Employing units are required to keep payroll records containing the information herein prescribed for a period of three calendar years, and furnish such information to the Employment Department upon demand.

(4) An employer shall furnish on request a weekly payroll record for the base year of any employee or former employee who

has filed a claim for benefits. Such information shall be placed in the mail not later than three days after the receipt of such request.

(5) In the event an employer fails to comply with this rule, the claim for benefits may be determined on the basis of available records in the possession of the Employment Department, and the employer's account charged accordingly.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.660

Hist.: IDE 150, f. & ef. 2-9-76; ED 1-1998, f. 2-20-98, cert. ef. 2-27-98

471-031-0010

Posting of Notices By Employers

Each subject employer shall post, in a place conspicuous to his employees, a notice provided by the Employment Department stating that the employer is subject to the Employment Department Law.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.679

Hist.: IDE 150, f. & ef. 2-9-76

471-031-0015

Corporate Officer and Shareholder Dividends as Wages

Dividends paid to a corporate officer or shareholder shall be considered wages to the extent that they are reasonable compensation for services performed for the corporation.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.095 & ORS 657.105 - ORS 657.140

Hist.: IDE 153, f. 12-23-77, ef. 1-1-78

471-031-0017

Corporate Officer/Director Election

(1) For the purposes of ORS 657.044 an election not to provide coverage shall apply to all corporate officers who are directors of the corporation, who have a substantial ownership interest in the corporation and who are members of the same family.

(a) The term "members of the same family" means persons who are members of the same family and who each bear one of the following relationships to one of the others: grandparent, parent, son, daughter, son-in-law, daughter-in-law, grandchild, spouse, sibling, legally adopted child, stepchild and stepparent.

(b) The term "substantial ownership" means total family ownership equal to or greater than seventy-five percent of the corporation with each family member who is a corporate officer and director having ownership interest.

(2) An employing unit which has elected not to provide coverage may elect coverage under ORS 657.425.

(a) Such election shall be in writing and shall be effective on the first day of the calendar quarter in which the election was filed, or a later date when so specified in the election.

(b) Such election shall continue in effect for not less than two completed calendar years unless the qualifications outlined in section (1) of this rule have changed.

(3) The Director of the Employment Department shall mail a notice of approval or denial of the employing unit's election to the last known address as shown in the Employment Department's records. Such notice shall become final 20 calendar days after notice is mailed unless within such time the employing unit files with the Director, a request for a hearing with respect thereto.

(4) Hearings shall be conducted in accordance with the provisions of division 040 of OAR chapter 471.

(5) Judicial review of decisions issued pursuant to this rule shall be as provided for review of orders in contested cases in ORS 183.310 through 183.550. The Director of the Employment Department is designated as a party for purposes of hearings under this rule.

(6) Upon motion of the Director of the Employment Department or upon application of an interested employer, the Director may in accordance with ORS 657.676 reconsider a notice issued pursuant to section (3) of this rule.

(7) A request for hearing on the denial of an employing unit's election must be in writing and submitted by the employer or the employer's agent. The date of filing any request for hearing under this rule shall be determined in accordance with provisions of OAR 471-010-0040.

(8) The employees listed in OAR 471-031-0145 and the Tax Section Supervisor of Status may act on behalf of the Director for the purposes of sections (3) and (6) of this rule.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.044
 Hist.: ED 1-1998, f. 2-20-98, cert. ef. 2-27-98

471-031-0020

Incidental Expense of Employees

Moneys allowed to employees to reimburse them for expenses of meals in the event employees are required to perform work after their regular office hours and amounts paid to employees to reimburse them for traveling or other expenses actually incurred by them while performing service for the employer are not wages or payroll within the meaning of the Employment Department Law. No deduction may be made under this section unless an accurate detailed expense account is prepared by or with the knowledge of the employee and submitted to the employer in such form as will meet the requirements of the Internal Revenue Service and unless such account is preserved by the employer for a period of three calendar years.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095 & ORS 657.105 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76

471-031-0025

Pensions

An individual receiving a pension from a former employer shall not be considered an employee of that employer and the amount of the pension is not wages.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095 & ORS 657.105 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76

471-031-0030

Jury Pay

Compensation, reimbursement, fees, lodging, meals, or other remuneration paid or provided to an individual for services performed as juror are not wages.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095 & ORS 657.105 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76

471-031-0035

Bonuses, Fees, and Prizes

Bonuses, fees, and prizes are wages if paid or given by the employer to his employee as compensation, reward, or added remuneration for services covered by the Employment Department Law. Bonuses, fees, and prizes shall be included in the payroll of the employer at the time they are paid. A bonus, fee, or prize paid to or received during a calendar year shall be wages earned during the calendar year paid, and the employer's tax rate for such year shall be applicable to any bonus, fee, or prize.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095 & ORS 657.105 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76

471-031-0040

Accident Compensation

When an employer continues the payment of wages during a disability period, or pays to the employee all or part of the difference between benefits or compensation received from an insurance carrier or State Accident Insurance Fund and his regular or usual wage, the sums so paid by the employer are wages unless excluded from the term wages by ORS 657.115 and 657.125. Lump sum or other special payments to compensate an employee for an accident sustained in the course of his employment are not wages.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.115 & ORS 657.125
 Hist.: IDE 150, f. & ef. 2-9-76

471-031-0045

Dismissal and Separation Allowances, Vacation Pay, Holiday Pay, and Guaranteed Wage Payments

(1) Remuneration paid as a dismissal or separation allowance, vacation pay, holiday pay, or guaranteed wage is "wages."

(2) For purposes of ORS 657.085 and 657.087, employment does not include service performed by certain individuals to the extent the compensation paid to such individuals consists of commissions, a share of the profit or overrides. The amount of a loan which legally and in fact obligates the borrower to repay the principal amount whether or not commission earnings, a share of the profit or overrides are applied to reduce the payable balance is not wages. However, service performed by an individual who receives a guaranteed payment (whether termed an advance, loan, income leveling, commission guarantee or other similar term) against future commissions, a share of the profit or overrides is employment and the amount of the guaranteed payment is wages.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.085, ORS 657.087, ORS 657.095 & ORS 657.105 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 1-1981, f. & ef. 1-15-81

471-031-0050

Gifts

Gifts, other than tips or gratuities, received by an employee during the course of employment from persons other than the employer are not wages. The Director, however, reserves the right, based on the facts in each particular case, to determine whether or not the gift is in fact a bonus, fee, or prize given as a reward or added remuneration for services rendered.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095 & ORS 657.105 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 2-1985, f. 11-18-85, ef. 1-1-86

471-031-0055

Remuneration Other than Cash

(1) Subject to the provisions of section (2), the term "wages" includes the cash value of all remuneration paid in any medium other than cash, except for agricultural labor and domestic service and the specific exemptions enumerated in ORS 657.115 to 657.140.

(2) Board, lodging, services, facilities, or privileges furnished by an employer shall be considered remuneration paid for services performed by an employee unless it appears that furnishing of the same was not required by the terms of the contract of hire and that the value thereof was not a material factor in the determination by either party of the amount of any cash remuneration payable for such services.

(3) The cash value of non-cash remuneration shall be either:
 (a) The amount of non-cash remuneration which the employer carries on his payroll, provided such amount is comparable to values prevailing in the community; or

(b) An amount determined by the Director when the value of non-cash remuneration is not carried on the employer's payroll. In such determination, board furnished by an employer as remuneration for services shall have a minimum value of \$150 per month or \$1.50 per meal. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts, or lodges, or if a room only, an apartment, a house, or any other consideration is provided, the value for tax purposes will be the actual value thereof.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095 & ORS 657.115 - ORS 657.140
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; IDE 2-1982, f. & ef. 12-8-82

471-031-0057

Equipment Rental Deductions

(1) If a person is found to be an employee under ORS Chapter 657 and is under contract, the terms of which require such individual to furnish a truck/tractor or other heavy equipment in addition to labor, 25 percent of the total payment under the contract is to be considered as wages.

(2)(a) If a person is found to be an employee under ORS Chapter 657 and is under contract as a faller and/or buckler, the terms of which require such individual to furnish tools or tools and transportation in addition to labor, the following percentages of gross payments under the contract shall be considered as wages:

(A) Hand tools only, 90%;

(B) Employment requiring worker to furnish hand tools and transportation, 85%;

(C) Power saws and hand tools, 80%;

(D) Employment requiring worker to furnish power saws, hand tools and transportation, 75%.

(b) The transportation allowance is applicable when the person under contract furnishes transportation of others as part of the contract. It does not apply to travel between the employee's personal residence and the initial job site or return to the employee's residence.

(3) The percentages to be considered as wages under this rule may be modified to reflect a reasonable amount for equipment and tool allowance if the person under contract is paid on a basis other than piecework or for the entire job.

(4) If a person is found to be an employee under ORS Chapter 657 and is under contract in the construction trades, the terms of which require the individual to furnish minor material items such as nails, tape, etc., in addition to labor, 100 percent of the total payment under the contract is to be considered as wages.

(5) Notwithstanding sections (1), (2), and (3) of this rule, if the total payment to the employee is used for withholding and social security tax purposes, 100% of the payment shall be considered as wages.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.015, ORS 657.030, ORS 657.095 & ORS 657.105 - ORS 675.140

Hist.: 1DE 2-1982, f. & ef. 12-8-82

471-031-0060

Payments by an Employer to Persons in the Military Service

Payments made by an employer voluntarily and without contractual obligation, to or in behalf of a person for periods during which such person performs military services in the Army, Navy, Air Forces, National Guard, or similar units of the United States or any state, do not constitute wages in determining benefit rights or for tax purposes.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.065

Hist.: 1DE 150, f. & ef. 2-9-76

471-031-0065

Employer Elections to Cover Multi-State Workers

(1) Employer elections to cover Multi-State workers shall be in accordance with the procedures, terms, and requirements of the Interstate Reciprocal Coverage Agreement.

(2) The Manager of Tax is authorized to approve or disapprove reciprocal coverage elections.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.035, ORS 657.425 & ORS 657.755 - ORS 657.775

Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 5-1979, f. & ef. 8-27-79

471-031-0067

One Percent Penalty

(1) The Director of the Employment Department shall assess the penalty authorized by ORS 657.457 and mail notice of the assessment of such penalty to the employer's last known address as shown in the Employment Department's records on or before October 20 each year. Such penalty shall become final on the November 10 immediately following the assessment.

(2) On or after the date of the assessment, but prior to the November 10 immediately following the assessment, the employer may request waiver of the penalty based on "good cause" as that term is defined in OAR 471-031-0151.

(3) If an employer makes a request for waiver of the penalty within the time prescribed in Section (2) of this rule, the Director shall make a decision, either granting or denying the waiver, and mail notice thereof to the employer's last known address as shown in the employment Department's records. If, prior to the November 10 immediately following the assessment, the employer establishes "good cause," as defined in OAR 471-031-0151, for failure to file all reports or pay all taxes due by September 1, the Director shall grant the request for waiver and remove the penalty from the employer's account. If the employer fails to establish "good cause," as defined in OAR 471-131-0151, prior to the November 10 immediately following the assessment, the director shall deny the request for

waiver. If the request for waiver is denied, the director shall notify the employer that a request for a contested case hearing may be filed within 20 days after mailing of the penalty waiver decision.

(4) The period within which an employer request a waiver of the penalty or a hearing on the denial of a waiver may be extended a reasonable time upon a showing of "good cause" for the late request as defined in OAR 471-040-0010.

(5) Hearings held and referee decisions issued pursuant to section (3) of this rule shall be in accordance with OAR 471-040-0015 through 471-040-0040.

(6) Judicial review of referee decisions issued pursuant to this rule shall be as provided for review of orders in contested cases in ORS 183.310 through 183.550. The Director of the Employment Department is designated as a party for purposes of hearings under this rule.

(7) Upon motion of the director of the Employment Department or upon application of an interested employer, the Director may reconsider a penalty imposed under ORS 657.457 irrespective of whether it has become final:

(a) Such reconsideration shall be restricted to penalties resulting from clerical errors or errors of computation and may include a new decision upon any grounds or issues not previously ruled upon or new facts nor previously known to the Director;

(b) A new decision made as a result of reconsideration shall be subject to hearing and judicial review in accordance with this rule.

(8) Both a request for waiver of the penalty for "good cause," and a request for hearing on the denial of a request for waiver must be in writing. The date of any request for waiver or request for hearing under this rule shall be:

(a) The postmarked date on the request, if mailed; or

(b) The machine imprinted date on the request, if transmitted by facsimile device; or

(c) In the absence of a postmark or machine imprinted date, the most probable date of mailing as determined by the Director.

(9) The employees listed in OAR 471-031-0145 and the Supervisor of Tax Recovery may act on behalf of the Director for the purposes of section (1), (2), and (3) of this rule.

Stat. Auth.: ORS 183, ORS 657.457, ORS 657.610 & OL 1993, Ch. 778

Stats. Implemented: ORS 657.457

Hist.: ED 3-1994, f. 8-24-94, cert. ef. 8-28-94; ED 6-1994(Temp), f. & cert. ef. 10-26-94; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

471-031-0070

Taxes

(1) Except as provided in this rule, each employer shall make and file a quarterly report of taxes due upon forms provided by the Director. Taxes shall be payable for each calendar quarter with respect to wages paid within such calendar quarter. Quarterly taxes shall be due and payable on or before the last day of the month following the close of the calendar quarter for which taxes are payable; provided, however, that when the due date specified falls upon a Saturday, Sunday, or a legal holiday, quarterly reports and payment of taxes shall not be due until the next business day.

(2) When any employer goes out of business, any and all taxes required by the Employment Department Law or the regulations of the Director shall be immediately due and payable.

(3) An employer who fails to pay taxes as required by section (1) of this rule is delinquent. If such delinquency continues following the mailing of a notice of delinquency to the employer's last-known address as shown by the records of the Director, such employer may be required to report and pay taxes monthly until all delinquent taxes have been paid in full and the Director approves an application pursuant to procedures adopted by the Director to make quarterly reports and pay taxes as provided in section (1) of this rule.

(4) When an employer has become delinquent in the payment of taxes and is required to pay said taxes monthly, such monthly taxes shall become due and payable on the last day of the month following the close of the month for which such taxes are payable. If the taxes are not so paid, the employer shall be deemed to be delinquent.

(5) Any employer found to be delinquent in the payment of taxes as provided in this rule shall be subject to the penalties as spec-

ified in ORS 657.515, and further may be assessed an additional penalty as provided in ORS 657.457.

(6) When taxes or reports have been sent to the Director through the U. S. Mails, postage prepaid for delivery to the Director, the date they are postmarked by the Post Office shall be the date of receipt by the Director. Such date shall be used in the calculation of interest charges, delinquencies, penalties, or other sanctions provided by law. In the absence of a postmarked date, the date of receipt shall be the most probable date of mailing as determined by the Director.

Stat. Auth.: ORS 183, ORS 657.457, ORS 657.610 & Ch. 778, OL 1993
 Stats. Implemented: ORS 657.457 & ORS 657.504 - ORS 657.575
 Hist.: IDE 150, f. & ef. 2-9-76; ED 3-1994, f. 8-24-94, cert. ef. 8-28-94

471-031-0072

Application of Payments

(1) Except as otherwise provided by statute or directed by a court of competent jurisdiction, payments made to the Employment Department by or on behalf of an employer for legal fees, penalties, interest, or taxes in accordance with the provisions of ORS Chapter 657 shall be credited to the employer's account in the following order of priority:

- (a) Legal fees;
- (b) Penalties;
- (c) Interest;
- (d) Taxes.

(2) The Director may identify categories of indebtedness for internal accounting procedures and may retire each category separately in the order of priority set forth in section (1) of this rule.

(3) Nothing in this rule shall be construed in any way as abridging or limiting the authority or powers of the Director granted under ORS 657.457, 657.515, 657.517, or 657.610.

(4) The employees listed in OAR 471-031-0145 may act on behalf of the Director for purposes of sections (2) and (3) of this rule.

(5) Notwithstanding any instructions to the contrary by or on behalf of the employer, payments will be applied in the manner specified in this rule.

(6) Credit balances will be treated as payments for purposes of this rule.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.457, ORS 657.505, ORS 657.515, ORS 657.557, ORS 657.642, ORS 657.663 & ORS 657.990
 Hist.: ED 5-1996, f. & cert. ef. 8-5-96

471-031-0075

Appointment of an Agent to Act on Behalf of a Group of Employers

(1) Employers who are engaged in substantially similar operations, and rotationally employ the same group of employees in employment during the course of a year may:

- (a) Pool their employment experience with respect to those employees under the Employment Department Law;
- (b) Declare their intention of operating with respect to those employees through an agent in the same manner as though the agent were the employer of those employees as provided in ORS 657.475; and
- (c) File with the Director an application requesting the agent appointed by the group be permitted to act for the group.

(2) The agent shall maintain, prepare, and file reports and make tax payments required under the Employment Department Law and these rules. In addition, he shall submit as a supplement to each regular tax report a supplementary tax report showing by months the amount of the payroll and the total taxes paid on behalf of each member of the group of employers.

(3) Prior to approval or disapproval by the Director of an application, a copy of the agreement between the agent and the appointing group authorizing the agent to represent them shall be submitted for the consideration of the Director.

(4) The tax rate of each employer in the group shall be the rate assigned in accordance with ORS 657.435 unless there has been one year immediately preceding the computation date throughout which his account has been chargeable with benefits. Any period during which benefits were chargeable against his individual account may be combined with the period of membership in the group dur-

ing which benefits paid on the basis of wage credits earned with such employer were chargeable to the agent's account, for the purpose of establishing a year of experience.

(5) For the purposes of rate determination pursuant to the Employment Department Law:

(a) The Director shall establish and maintain a separate account in the name of the agent. This account shall be charged with all benefits paid on the basis of wage credits reported by the agent. All wage reports submitted by the agent shall be maintained as if they represented wage reports of employees of such agent;

(b) In addition, the Director shall continue to maintain a separate account for each member of the group and shall transfer to each account the amount of payroll reported on his behalf by the agent and the taxes paid on his behalf by the agent;

(c) As of June 30 of each year, the Director shall determine the amount of each employer's share of the total benefit charges which have been made against the agent's account during the year ending on said date; such share shall be in the proportion that the individual employer's payroll in the year, reported by the agent, bears to the total payroll in such year reported by the agent for all of the employer members of the group. When determined, the amount of benefit charges to be allocated to each individual employer shall be transferred to that employer's account.

(6) If any member of the group terminates his relationship with the agent, he shall within ten (10) days thereafter notify the Director. The employer shall continue to be charged with his prorated share of benefit charges so long as the base year period against which charges are being made includes any calendar quarter in which the employer was a party to the agency agreement.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.435 & ORS 657.475
 Hist.: IDE 150, f. & ef. 2-9-76

471-031-0076

Common Paymaster

(1) As provided in ORS 657.477, a common paymaster established for a group of related corporations is any member thereof that disburses remuneration to employees of two or more of those corporations on their behalf. However, the common paymaster is not required to disburse remuneration to all employees of the two or more related corporations:

(a) A common paymaster making disbursements on behalf of related corporations to employed individuals shall be responsible for taxes, interest and penalties imposed by ORS Chapter 657 on all wages disbursed by it;

(b) For purposes of charging benefits paid and mailing notices to base year employers, the common paymaster shall be considered the employer for all wages disbursed to individuals by the common paymaster whether payment was for services performed for the common paymaster or for a related corporation.

(2) If the common paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required by ORS Chapter 657, the Director may hold each of the related corporations liable for a proportionate share of the obligation. Such proportionate share may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations. When there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Director may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

(3) Two or more corporations shall be considered related corporations for an entire calendar quarter if they satisfy any of the following tests at any time during that calendar quarter:

(a) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the value of shares of all classes of stock of each corporation is owned by one or more of the other corporations, and the common parent corporation owns stock possessing more than 50 percent of the total combined voting power or more than 50 percent of the total value

of shares of all classes of stock of at least one of the other corporations;

(b) Five or fewer persons who are individuals, estates or trusts own more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation;

(c) A group of two or more corporations is combined with a common parent corporation as described in subsection (a) of this section and also such parent corporation is a member of a group of corporations as described in subsection (b) of this section;

(d) Fifty percent or more of one corporation's officers are concurrently officers of the other corporation;

(e) Thirty percent or more of one corporation's employees are concurrently employees of the other corporation;

(f) When a corporation that does not issue stock is involved, either:

(A) Fifty percent or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or

(B) The Holders of fifty percent or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than fifty percent of that power with respect to the other corporation.

(4) For purposes of section (3) of this rule, concurrent employment means the simultaneous existence of an employment relationship (within the meaning of ORS Chapter 657) between an individual and two or more corporations. Such a relationship contemplates the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations:

(a) The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial;

(b) Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;

(c) An individual who does not perform substantial services for a corporation is presumed not employed by that corporation;

(d) A corporation which has no employees performing services for it in Oregon cannot be the common paymaster for Oregon employees of its related corporations.

(5) Related corporations which compensate their employees through a common paymaster shall file with the Director the details of their plan. The detail shall include the names of the related corporations, the name of the common paymaster corporation and the class or classes of workers involved. The filing shall include documentation to substantiate the corporations are related as defined in section (3) of this rule and that employees are concurrently employed. An amendment to the plan shall be filed whenever there is a change in the related corporations participating in the plan, a change in the common paymaster or a change in the class or classes of workers involved.

(6) Plans submitted pursuant to section (5) of this rule shall be filed within the 30 day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a common paymaster shall be determined on a quarterly basis.

(7) A common paymaster is not a successor corporation pursuant to ORS 657.480 for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the paymaster corporation.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.030 & ORS 657.477

Hist.: IDE 1-1981, f. & ef. 1-15-81

471-031-0080

Tax Compromise Policy

It shall be the policy of the Director to compromise tax claims pursuant to the provisions of ORS 657.515(7) where it appears that such action would be in the best interests and the statutory criteria for a settlement has been met.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.515 & ORS 657.517

Hist.: IDE 150, f. & ef. 2-9-76

471-031-0085

Employer Wages and Hours of Work Report

(1) In addition to the quarterly tax report and payment as provided in these rules, each employer shall file an employer's quarterly report of employees' wages and hours of work on forms provided by the Director and such other reports as may be required by the Director, duly completed in all respects.

(2) An employer may, with the Director's approval, substitute EDP medium for the report or reports required in section (1) of this rule. The employer's quarterly report of employees' wages and hours of work form furnished by the Director must be attached to or filed with the substitute EDP medium. All reports must be legible and complete as to the information required by this rule and the instructions contained on the report forms. Any report may be returned to the employer if improperly prepared, incomplete, or illegible and such employer shall be deemed to have failed to file reports as required by this rule and ORS 657.660.

(3) The employer's quarterly report of employees' wages and hours of work shall be made on or before the last day of the month following the close of the calendar quarter to which such report relates; provided, however, that when the due date falls upon a Saturday, Sunday, or a legal holiday, the report shall not be due until the next business day.

(4) An employer failing to file a complete and legible employer's quarterly report of employees' wages and hours of work as required in this rule and ORS 657.660 shall be subject to the penalties provided in ORS 657.457 and 657.663.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.457, ORS 657.570, ORS 657.660 & ORS 657.663

Hist.: IDE 150, f. & ef. 2-9-76; IDE 2-1982, f. & ef. 12-8-82; ED 1-1998, f. 2-20-98, cert. ef. 2-27-98

471-031-0090

Churches and Religious Organizations

Notwithstanding ORS 657.072, the term "employment" as used in ORS Chapter 657 includes service performed in the employ of a church or other nonprofit religious organization including service performed by a minister of a church or by a member of a religious order.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.072

Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 1-1987, f. & ef. 1-12-87; ED 1-1989(Temp), f. & cert. ef. 5-18-89; ED 2-1989, f. & cert. ef. 10-30-89; ED-3-1996(Temp), f. 7-12-96, cert. ef. 7-22-96; ED 9-1996, f. 12-19-96, cert. ef. 12-23-96

471-031-0095

Approval of Work Experience Programs

(1) The Director may approve a program of instruction which combines academic instruction with work experience if it meets the requirements of ORS 657.030(3)(d).

(2) The Director shall revoke the approval of a program of an institution if he determines that the institution no longer meets the requirements in ORS 657.030(3)(d). Upon revoking such approval, the services performed in a work experience program shall be employment subject to ORS Chapter 657.

(3) The approval by the Director of a program of an institution shall be applicable only to those individuals participating in the program who are enrolled at the institution as a full-time student pursuant to the rules and policies of such institution. Upon acquiring a status of less than a full-time student, the services performed in a work experience program shall be employment subject to ORS Chapter 657.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.030

Hist.: IDE 150, f. & ef. 2-9-76; IDE 2-1984, f. & ef. 9-28-84; ED 2-1987, f. & ef. 11-27-87

**471-031-0105
Student Employment**

For purposes of ORS 657.030(3)(a) the term “student” does not include a student enrolled in a college or university if such student is:

- (1) An undergraduate student enrolled in courses totaling less than 12 credit hours;
- (2) A graduate student enrolled in courses totaling less than nine credit hours.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.030
Hist.: IDE 150, f. & ef. 2-9-76; IDE 2-1984, f. & ef. 9-28-84

**471-031-0110
Action at Law, Verification, Liens, Distraint Warrants**

The Administrator for Programs, Manager of Tax, or other person designated by the Director is authorized for and on behalf of the Director to:

- (1) Verify all pleadings filed in actions at law, and to perform such acts necessary in the prosecution of such actions at law.
- (2) Execute and file lien claims and distraint warrants for taxes, interest, and penalty due and owing the Unemployment Compensation Trust Fund and the Employment Department Special Administrative Fund.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.457 & ORS 657.504 - ORS 657.575
Hist.: IDE 150, f. & ef. 2-9-76; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1985, f. & ef. 11-18-85

**471-031-0120
Christmas Tree Farms**

Services performed in connection with the planting, cutting, and transporting of Christmas trees from uncultivated land or forest do not constitute agricultural labor.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.045
Hist.: IDE 153, f. 12-23-77, ef. 1-1-78

**471-031-0125
In-Home Sales**

For the purposes of ORS 657.087(2), “In-person solicitation” means a face-to-face contact at the customer’s residence and does not include mail, telephone or other non-personal contacts.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.087
Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; IDE 1-1981, f. & ef. 1-15-81; ED 1-1987, f. & ef. 1-12-87

**471-031-0130
Domestic Service**

(1) For purposes of ORS 657.050(1) “domestic service” means general services of a household nature in or about a private home, including, but not limited to: services performed by cooks, waiters/waitresses, butlers, housekeepers, child monitors, general houseworkers, personal attendants, baby-sitters, janitors, launderers, caretakers, gardeners, grooms and chauffeurs of automobiles for family use.

(2) Services not of a household nature, such as services performed as a private secretary, tutor or nurse, even though performed in the employer’s private home, are not domestic service.

(3) A private home is a fixed place of abode of an individual household. A separate and distinct dwelling unit maintained by a household in an apartment house, hotel or other similar establishment may constitute a private home, provided it is a place in which a person resides with the intention of residence, or has so resided with the intention of returning. If a dwelling house of an individual or family is used primarily as a boarding house for the purpose of supplying lodging to the public as a business enterprise, only that portion of the premises occupied by the individual or family may be considered a private home for the purposes of this rule.

(4) If domestic services for an employing unit are determined to be employment under ORS 657.050 at any time during a calendar year, that employing unit shall be an employer liable for taxes on all cash remuneration paid for such services during that entire calendar year.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.050
Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; IDE 5-1979, f. & ef. 8-27-79; ED 2-1989, f. & cert. ef. 10-30-89

**471-031-0135
Participants of Federal Training Programs**

In accordance with ORS 657.067(2), “employment” includes services performed by an individual as a participant in an on-the-job training (OJT) program of the Work Incentive Program.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.067
Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; IDE 5-1980, f. 6-5-80, ef. 6-16-80; IDE 1-1985, f. & ef. 11-18-85

**471-031-0140
Successor-in-Interest: Determination, Tax Rate, Consolidation**

(1) For purposes of ORS 657.480, “entire employing enterprise and all its incidents” means all of the employing enterprise necessary to carry on the business in the same manner as was done immediately prior to the transfer.

(2) An employer whose tax rate for a calendar year is determined in accordance with either ORS 657.462 or 657.435 and which has become final in accordance with ORS 657.485 shall pay taxes at the determined rate on all wages paid by all employing units of the employer during the calendar year for employment as defined in ORS Chapter 657.

(3) In consolidation of existing employing units, the tax rate experience will be consolidated for the next year’s rate determination only if:

- (a) The effective date of the consolidation is on or before August 31 of the current year; and
- (b) The Department is notified of the consolidation in writing prior to November 15 of the same year.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.435, ORS 657.462, ORS 657.480 & ORS 657.485
Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 2-1989, f. & cert. ef. 10-30-89

**471-031-0141
Partial Transfer of Experience**

(1) Under ORS 657.480(2) a new or existing employing unit that acquires an identifiable and segregable portion of an employer may apply for a partial transfer of employment experience in accordance with the provisions of ORS 657.462. The Director shall approve the application if:

- (a) The application for partial transfer of employment experience is filed within sixty days after the date of the transfer (acquisition) or within sixty days after July 1, 2000, whichever is later;
- (b) The application is filed on a form provided by the Department and is complete and accurate in all material respects;
- (c) The acquiring employer (successor) obtains and provides the Department with the written consent of the transferring employer (predecessor);
- (d) The acquiring employer establishes to the satisfaction of the Director that it acquired an identifiable and segregable unit of the transferring employing unit that could operate independently of the remainder of the transferring enterprise.

(e) The acquiring employer and the transferring employer are current on paying their unemployment insurance contributions and have no delinquent tax reports.

(2) The Director shall approve or deny all applications for partial transfer of employment experience submitted on proper forms. Written notice shall be mailed to the predecessor and successor at their last known addresses. Requests not received on proper forms or incomplete requests will be returned. If the application is denied, the successor can request a hearing in accordance with the provisions of ORS 657.683.

(3) For the period beginning with the date of the transfer of the employment experience record through the end of the calendar year in which the transfer occurs, the contribution rate of the predecessor shall be the same as if there had been no transfer. The contribu-

tion rate for a successor that was determined a subject employer prior to the transfer shall also be the same as if there had been no transfer. Upon approval of an application for partial transfer the Director shall:

(a) Assign a contribution rate for a successor that is a new employing unit, to be effective from the date of the transfer through the end of the calendar year in which the transfer occurs; and

(b) Notify the successor in writing of the tax rate assigned in subsection (3)(a) of this rule.

(4) In a partial consolidation, when both employing units are existing employers, the tax rate experience shall be consolidated for the next year's rate determination only if the date of the transfer is on or before August 31 of the current year.

(5) The percentage of employment experience to be transferred shall be calculated by dividing the number of employees transferred to the successor by the total number of employees of the predecessor prior to the transfer. This percentage, rounded to the nearest percentage number, shall then be applied to the benefit charges and taxable payroll of the predecessor and the resulting amounts shall comprise the employment experience to be transferred to the successor's account. The experience shall be added to the successor's account in the same quarter it is removed from the predecessor's account. The percent transferred plus the percent not transferred shall equal one hundred percent.

(6) Benefits charged to the predecessor in the quarter in which the transfer occurs and the next three quarters shall be split between the predecessor and successor in accordance with the percentage established in section (5) of this rule. For each quarter thereafter none of the benefits charged to the predecessor shall be transferred to the successor.

(7) For the limited purpose of calculating experience rates under this rule, if the transfer occurs after the fifteenth day of the middle month of a calendar quarter, wages paid by the predecessor during such quarter shall be split between the predecessor and successor in accordance with the percentage calculated in section (5) of this rule. If the transfer occurs on or before the fifteenth day of the middle month of a calendar quarter none of the wages paid by the predecessor during such quarter shall be split.

(8) For each calendar year commencing on or after the date of the transfer, the successor's contribution rate shall be based on its experience with taxable payroll and benefit charges, including the experience of the acquired portion of business as determined in sections (3), (4), (5), (6), and (7).

(9) The successor, if not an employer at the time of the transfer, shall become an employer as of the date of the transfer.

(10) In determining excess wages over the taxable wage amount, a successor may use the wages paid by the predecessor prior to the transfer.

(11) The Director may revoke, within three years of the date of the transfer, a previously approved transfer if the Director finds that either party submitted materially inaccurate or incomplete information.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.480
 Hist.: ED 1-2000, f. 3-31-00, cert. ef. 4-2-00

**471-031-0145
 Continuous Jurisdiction**

In accordance with the provisions of subsection (2) of ORS 657.676, the following employees are designated by the Director as having the authority to act for and in the name of the Director in matters of reconsideration and correction of determinations of employer subjectivity, tax rates or tax assessments:

- (1) Deputy Director;
- (2) Administrator for Programs;
- (3) Manager of Tax;
- (4) Supervisor of Central Operations;
- (5) Supervisor of Field Operations.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.676
 Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1985, f. & ef. 11-18-85; IDE 2-1986, f. & ef. 4-14-86

**471-031-0151
 Failure to File Reports or Pay Tax — Good Cause**

(1) As used in ORS 657.457, 657.552, and 657.663 "good cause" will be found to exist when the employer establishes by satisfactory evidence that factors or circumstances beyond the employer's reasonable control caused the delay in filing the required document or paying the tax due.

(2) In determining "good cause" under section (1) of this rule, the Director may consider all circumstances, but shall require at a minimum that the employer:

(a) Prior to the date the document or tax was due, gave notice to the Employment Department, when reasonably possible, of the factors or circumstances which ultimately caused the delay;

(b) Filed the required document or paid the tax due within seven days after the date determined by the Director to be the date the factors or circumstances causing the delay ceased to exist; and

(c) Made a diligent effort to remove the cause of the delay and to prevent its recurrence.

(3) In applying sections (1) and (2) of this rule, a lack of funds on the part of the employer shall not constitute good cause for failure to pay all taxes when due.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.457, ORS 657.552 & ORS 657.663
 Hist.: IDE 2-1984, f. & ef. 9-28-84

**471-031-0155
 Investigatory Subpoenas**

(1) Tax auditors or their supervisors may issue and cause to be served subpoenas which compel the attendance of witnesses and/or order the production of any books, papers, contracts, accounts, records, documents or other physical evidence in the possession of any person, company or corporation. Such subpoenas shall relate to a scheduled hearing or pertain to the discovery of information necessary to carry out the Employment Department's statutory duties, or as an adjunct to tax collection procedures.

(2) In connection with subpoenas issued pursuant to this rule, no witness fees or mileage shall be paid other than for attendance at a scheduled hearing. When witness fees and mileage are payable pursuant to this rule, payment shall be made in the same manner and subject to the same conditions as provided for in OAR 471-040-0020(6) and (7).

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.610 & ORS 657.660
 Hist.: IDE 1-1985, f. & ef. 11-18-85

**471-031-0160
 Computation of Excess Wages**

Excluded remuneration under ORS 657.095 shall be computed for each employing unit exclusively on the basis of its own payroll unless:

(1) ORS 657.480 requires two or more employing units to be treated as if there had been no change in ownership.

(2) Two or more corporations are treated as having a common paymaster under ORS 657.477 and OAR 471-031-0076.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.095, ORS 657.477 & ORS 657.480
 Hist.: ED 2-1989, f. & cert. ef. 10-30-89

**471-031-0175
 Agricultural Employment**

If agricultural services for an employing unit are determined to be employment under ORS 657.045 at any time during a calendar year, that employing unit shall be an employer liable for taxes on all cash remuneration paid for such services during that entire calendar year.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.045
 Hist.: ED 2-1989, f. & cert. ef. 10-30-89

**471-031-0180
 Independent Contractor Definition**

(1) This rule has been adopted jointly by the Construction Contractors Board, Department of Human Resources (Employment Department), Department of Insurance and Finance (Workers' Com-

pensation Division), and Department of Revenue of the State of Oregon under the authority of ORS 670.605.

(2) As used in the various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an “independent contractor” if the standards of ORS 670.600 and this rule are met:

(a) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(b) The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(c) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(d) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(e) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(f) The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;

(g) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(h) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(A) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(B) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(C) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(D) Labor or services are performed only pursuant to written contracts;

(E) Labor or services are performed for two or more different persons within a period of one year; or

(F) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

(3) For the purposes of subsection (2)(b) of this rule, “assumed business registrations or professional occupation licenses” do not include certificates or permits required pursuant to ORS Chapter 767.

(4) For the purposes of subsection (2)(e) of this rule, “periodic retainer” includes but is not limited to partial payments made periodically during the term of the contract.

(5) For the purposes of paragraph (2)(h)(F) of this rule, evidence that “the individual or business entity assumes financial responsibility for defective workmanship or for services not provided” is not

limited to the ownership of performance bond, warranties, errors and omission insurance, or liability insurance relating to the labor or services to be provided.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.040, ORS 670.600 & ORS 670.605

Hist.: ED 3-1991, f. & cert. ef. 10-14-91; ED 2-1992, f. & cert. ef. 6-29-92

DIVISION 40

APPEALS

Lower Appeals Procedure

471-040-0005

Request for Hearing

(1) A request for hearing must be in writing.

(2) Requests for hearing may be filed on forms provided by the state employment offices of the Department or similar offices in other states. However, use of the form is not required provided the party specifically requests a hearing.

(3) A request for hearing may be filed by mail, postage prepaid, by fax, or by personal delivery, to the Director’s main office, or to any Employment Department office in Oregon or similar office in any other state.

(4) When the request for hearing is filed by mail, the post-marked date affixed by the U.S. Postal Service shall be deemed to be the date of such filing, or, when the request for hearing is filed by fax, the date of such filing shall be deemed to be the encoded date on the fax document or fax receipt. In the absence of either a post-mark date or encoded fax document or fax receipt, the most probable date of mailing or faxing, as determined by the Director, shall be the date of filing.

(5) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.

(6) An amended Director’s decision shall not be grounds for dismissing a request for hearing unless the amended decision granted the appellant that which was placed in issue by the appeal.

(7) Upon receipt of a request for hearing, a referee shall be designated to conduct such hearing.

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 – ORS 657.270, ORS 657.335, ORS 657.610 & OL 1993, Ch. 729

Stats. Implemented: ORS 657.280, ORS 657.610 & ORS 657

Hist.: IDE 150, f. & ef. 2-9-76; IDE 5-1979, f. & ef. 8-27-79; ED 4-1994, f. & cert. ef. 9-2-94; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

471-040-0010

Late Request for Hearing

For the purposes of ORS 657.875:

(1) “Good Cause” exists when it is established by satisfactory evidence that factors or circumstances beyond reasonable control of the appellant caused the late filing.

(2) “A Reasonable Time,” as used in ORS 657.875, is when the appellant acted reasonably promptly in filing the request for hearing after the cessation of the circumstances which prevented the filing of the request for hearing within the statutory period.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.875

Hist.: IDE 150, f. & ef. 2-9-76

471-040-0015

Notice of Hearing

(1) To afford all parties a reasonable opportunity for a fair hearing, notice of hearing setting forth the time, date, place, and issue(s) in general shall be personally delivered or mailed at least five days in advance of the hearing to parties or their authorized agents at their last known address as shown by the record of the Director.

(2) The following parties shall be notified of a hearing when a request for hearing has been filed as provided by ORS 657.265 or 657.355:

(a) The Director;

(b) The claimant;

(c) The employing unit entitled to notice of the determination or decision under ORS 657.265; and any employing unit that could be expected to have information relating to the issue(s) of the hearing.

(3) In all other cases for which ORS Chapter 657 provides for hearing, parties who shall be notified of a hearing are:

- (a) The Director; and
- (b) The employer or employing unit which has filed a request or application for hearing.

(4) To best serve the parties involved, a referee may set a hearing at a convenient location or convenient locations.

(5) A referee may consolidate two or more hearings whenever it appears to the referee that such procedure will not unduly complicate the issues or jeopardize the rights of any of the parties.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.280 & ORS 657.610
 Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 153, f. 12-23-77, ef. 1-1-78; 1DE 2-1980, f. & ef. 2-5-80

471-040-0020

Subpoenas

(1) At the timely request of a party or on the referee's own initiative, a referee may issue a subpoena requiring a person to appear at a scheduled hearing for the purpose of giving testimony, or producing books, records, documents, or other physical evidence.

(2) A party that submits a request for subpoena should show:

(a) The name of the witness and the address where the witness can be served the subpoena;

(b) That the testimony of the person is material; and

(c) That the person will not voluntarily appear.

(3) If the requesting party wishes the witness to produce books, records, documents, or other physical evidence, the party should also show:

(a) The name or a detailed description of the specific books, records, documents, or other physical evidence the witness should bring to the hearing;

(b) That such evidence is material; and

(c) That such evidence is in the possession of the person who will not voluntarily appear and bring such evidence to the hearing.

(4) A referee may limit the number of subpoenas for witnesses material to the proof of any one issue at the hearing.

(5) Service of the subpoena upon the witness is the responsibility of the party requesting the subpoena.

(6) A witness who attends a hearing pursuant to subpoena issued under this rule is entitled to witness fees and mileage as provided in Rule 55 E(1), Rules of Civil Procedure, and in ORS 44.415(2) for subpoenaed witnesses. Fees will be paid by check mailed subsequent to the conclusion of the hearing. The witness shall request payment of fees by completion of forms approved by the Employment Department. Payment of fees shall be made promptly upon receipt of the request for payment.

(7) Only witnesses, other than parties, who attend a hearing pursuant to subpoena issued under this rule may be paid or reimbursed by the Employment Department for witness fees and mileage.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.280 & ORS 657.610
 Hist.: 1DE 150, f. & ef. 2-9-76; 1DE 153, f. 12-23-77, ef. 1-1-78; 1DE 8-1981, f. & ef. 11-2-81; 1DE 1-1985, f. & ef. 11-18-85; ED 1-1991, f. & cert. ef. 4-1-91

471-040-0021

Postponement of Hearing

(1) At the request of a party or on the referee's own initiative, a referee may order, orally or in writing, that a hearing be postponed.

(2) A postponement may be granted by hearings section staff at the request of a party if:

(a) The request is promptly made after the party receives the notice of hearing; and

(b) The party has good cause, as stated in the request, for not attending the hearing at the time and date set.

(3) For the purpose of subsection (2)(b) of this rule, good cause exists when:

(a) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(b) Failure to grant the postponement would result in undue hardship to the requesting party.

Stat. Auth.: ORS 183.335, ORS 657.260, ORS 657.265 - ORS 657.270, ORS 657.335, ORS 657.610 & Ch. 729, OL 1993
 Stats. Implemented: ORS 657.280 & ORS 657.610
 Hist.: 1DE 153, f. 12-23-77, ef. 1-1-78; ED 4-1994, f. & cert. ef. 9-2-94

471-040-0023

Telephone Hearings

(1) Unless precluded by law, the Employment Department may, in its discretion, hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes the Department from allowing some parties or witnesses to attend by telephone while others attend in person.

(2) The Department may direct that a hearing be held by telephone upon request or on its own motion.

(3) The Department shall make an audio or stenographic record of any telephone hearing.

(4) Prior to commencement of an evidentiary hearing that is held by telephone, each party and the Department shall provide to all other parties and to the Department copies of documentary evidence that it will seek to introduce into the record.

(5) Nothing in this rule precludes any party or the Department from seeking to introduce documentary evidence in addition to evidence described in section (4) during the telephone hearing and the presiding officer shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the Department and to the other parties, the hearing may be continued upon the request of any party or the Department for sufficient time to allow the party or the Department to obtain and review the evidence.

(6) The Department may delegate to the referee the discretion to rule on issues raised under this rule.

(7) As used in this rule, "telephone" means any two-way electronic communication device.

Stat. Auth.: ORS 657.266; ORS 657.270; ORS 657.317; ORS 657.610; & ORS 183.105(7)
 Stats. Implemented: ORS 657.280 & ORS 657.610
 Hist.: 1DE 2-1980, f. & ef. 2-5-80; ED 2-1995, f. 8-29-95, cert. ef. 9-3-95

471-040-0025

The Hearing

(1) The purpose of the hearing is to inquire fully into the matters at issue and to make a decision on the basis of the evidence adduced at the hearing.

(2) No referee shall participate in a hearing if the referee has any private interest in the outcome of the hearing or holds any bias or prejudice which would impair a fair and impartial hearing. All testimony at any hearing before a referee shall be under oath or affirmation.

(3) The referee shall conduct and control the hearing. The referee shall determine the order of the presentation of evidence, administer oaths, examine any witnesses, and may either on the referee's own or a party's request exclude witnesses from the hearing room. Parties, or their authorized agents, shall have the right to give testimony and to call and examine witnesses.

(4) Parties may appear on their own behalf or by authorized agent or counsel. The referee may require agents, other than counsel, when appearing without the party, to provide written authorization to appear for such party. When a party makes a general appearance at a hearing, defects in notice are waived.

(5) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the referee from entering a decision unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible. If a question of privilege arises, the referee shall fully and clearly inform the party of any rights as to such privilege and deal with procedural problems created by the existence

of such issue in a way which protects the party's right to a fair hearing. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(6) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except for notice taken, no other factual information or evidence shall be considered by the referee in making the decision. The experience, technical competence, and specialized knowledge of the referee may be utilized in the evaluation of the evidence presented. The referee may offer and receive evidence deemed relevant and essential by the referee to a fair disposition of the issues.

(7) The referee may take official notice of judicially cognizable facts. The referee may take notice of general, technical, or scientific facts within the referee's specialized knowledge and may take notice of documents, records, and forms retained within the Employment Department's files. The referee shall notify the parties of any official notice taken during the hearing or in the decision prior to such decision becoming final. Parties shall be afforded an opportunity to contest the material so noticed during the hearing or prior to the referee's decision becoming final.

(8) In any hearing, the referee shall render a decision on the issue and law involved as stated in the notice of hearing. The referee's jurisdiction and authority is confined solely to the issue(s) arising under the Employment Department Law. Subject to objection by any party, the referee may also hear and enter a decision on any issue not previously considered by the authorized representative of the Director and which arose during the hearing. The referee may continue the hearing or remand the matter to the authorized representative for consideration and action upon such issue(s) under the provisions of ORS 657.265. However, in no event shall the referee accept jurisdiction of a new issue and proceed with hearing on such issue when an interested party to such new issue has not waived right to notice.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.280, ORS 657.610 & ORS 657
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

471-040-0026

Continuance of Hearing

(1) At the request of a party or on the referee's own initiative, a referee may order, orally or in writing, that a hearing be continued.

(2) A referee may grant a continuance at the request of a party if:

(a) The request is made prior to the issuance of the referee decision; and

(b) The party has good cause, as stated in the request, for continuing the hearing.

(3) For the purpose of subsection (2)(b) of this rule, good cause exists when:

(a) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(b) Failure to grant the continuance would result in undue hardship to the requesting party.

(4) A referee other than the one who presided at the first hearing may conduct a continued hearing.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.280, ORS 657.610 & ORS 657
 Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

471-040-0030

Referee's Decision

(1) The referee shall promptly prepare and serve a written decision after the conclusion of the hearing.

(2) The referee's decision shall be based upon the evidence in the hearing record and upon any stipulated or officially noticed facts. Any findings of fact by the referee shall be based upon reliable, probative, and substantial evidence.

(3) The referee's decision shall be in an approved form and shall contain:

(a) A caption clearly identifying the parties;

(b) A statement of jurisdiction;

(c) A statement of the issues and law involved;

(d) Findings of fact;

(e) Conclusions based upon the findings of fact; or a statement adopting conclusions set forth in the appealed administrative decision; and

(f) A decision setting forth the action to be taken.

(4) Copies of the referee's decision shall be personally delivered or mailed to the parties, or their authorized agents, at their last address of record.

(5) A referee may issue an amended decision prior to the previous decision becoming final. The amended decision shall be served as required by these rules and shall be subject to review.

(6) In accordance with the provisions of subsection (4) of ORS 657.270, an application for review of a referee decision may be filed by the Director or the Director's designee

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.280, ORS 657.610 & ORS 657.270(4)
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; IDE 5-1979, f. & ef. 8-27-79; IDE 2-1982, f. & ef. 12-8-82; IDE 2-1984, f. & ef. 9-28-84; ED 1-1987, f. & ef. 1-12-87; ED 1-1991, f. & cert. ef. 4-1-91; ED 5-1992, f. & cert. ef. 12-14-92; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

471-040-0035

Dismissals of Requests for Hearing

(1) A referee may order that a request for hearing be dismissed upon request from the appellant to withdraw the request for hearing.

(2) A referee may order that a request for hearing be dismissed upon request of the Director or the Director's authorized representative after either one has:

(a) Issued a new or amended determination or decision that grants the appellant that which was placed in issue by the request for hearing; or

(b) Withdrawn or cancelled the determination or decision upon which the request for hearing was based.

(3) On the referee's own initiative, a referee may order that a request for hearing be dismissed if:

(a) The appellant fails to file the request for hearing within the time allowed by statute or rule;

(b) The appellant employer, under ORS 657.485, fails to set forth with the request for hearing the reason therefor;

(c) The appellant fails to appear at the hearing at the time and place stated in the notice of hearing;

(d) The request for hearing has been filed prior to the service of the decision or determination that is the subject of the request;

(e) The request for hearing is made by a person not entitled to a hearing on the merits or is made with respect to a determination or decision of the Director or authorized representative with respect to which there is no lawful authority to request a hearing.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.280, ORS 657.610 & ORS 657.485
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

471-040-0040

Reopening of a Case

(1) After service of a referee's decision that is subject to review by the Employment Appeals Board, a referee may reopen the case at any time if the party:

(a) Requesting the reopening failed to appear at the hearing;

(b) Makes, in writing to the referee promptly after gaining knowledge of the decision, a request to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) Good cause for the purpose of subsection (1)(c) of this rule exists when:

(a) Notice of hearing was not personally delivered or mailed to the party or the party's authorized agent at the last known address as shown by the Employment Department record; or

(b) The circumstances causing the failure to appear are beyond the reasonable control of the party.

(3) The referee's ruling on a request to reopen the case shall be in writing and served upon the parties.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.280, ORS 657.610 & ORS 657

Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99

DIVISION 41

APPEALS

Higher Appeals Procedure

471-041-0045

Statement of Purpose

These administrative rules establish the procedures that the Employment Appeals Board will follow in discharging its duties. The Employment Appeals Board has the authority to adopt these rules pursuant to ORS 657.685(6). Rules in this Division become effective upon the effective date set forth in the Certificate and Order filed with the Secretary of State and apply to cases associated with Applications for Review filed on or after that date.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist: ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0050

Definitions

The following definitions apply in the interpretation of the rules of the Employment Appeals Board:

- (1) "ALJ" means Administrative Law Judge.
- (2) "Applicant" means any person who files an application for review of a Hearing Decision.
- (3) "Application for review" means any letter, form or other written statement containing a request for the EAB to review a Hearing Decision.
- (4) "Authorized Representative" means the agent authorized to represent a party in matters before the EAB.
- (5) "Claimant" means a person who has filed a claim for unemployment insurance benefits.
- (6) "EAB" means the Employment Appeals Board.
- (7) "Hearing decision" means the decision or amended decision issued by the ALJ.
- (8) "Respondent" means any party to the proceeding before the ALJ other than the applicant.
- (9) "Fax" means a facsimile copy of a document transmitted via telephone.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-0010-010; ED 1-1995, f. & cert. ef. 1-9-95

471-041-0055

Fees for Public Records and Publications

The EAB will charge a fee reasonably calculated as reimbursement for the cost of providing copies of public records to the public, except for copies of transcripts and exhibits provided to parties for purposes of EAB review pursuant to these rules. In the event that a request for copies requires an inordinate amount of time to fulfill, the EAB shall charge a fee for the staff time involved in producing the copies. All fees must be paid before copies of public records will be provided. The EAB will not impose a fee for mere inspection of public records.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist: ED 1-1995, f. & cert. ef. 1-9-95

471-041-0060

Application for Review

- (1) A party, or the party's authorized representative, entitled to receive a Hearing Decision in an unemployment insurance matter over which the EAB has jurisdiction, may file an Application for Review. An Application for Review shall:
 - (a) Be in writing, and in legible form;
 - (b) Explicitly state that the applicant requests EAB review of a Hearing Decision and identify the Hearing Decision for which review is requested;

- (c) Specify the claimant's name;
 - (d) Specify the applicant's current mailing address;
 - (e) Specify the applicant's name or the name of the applicant's representative; and
 - (f) Specify if the applicant intends to file a written argument.
- (2) An application for review may be filed in person, by mail or by fax to the office of the EAB or to any office of the Employment Department. An Application for Review may be filed in person or by mail to any Employment Security Agency in any other state or jurisdiction where the claimant is claiming benefits.
- (3) If filed by mail, the application must be properly addressed and bear sufficient postage.
- (4) If faxed, the application must be received by 5:00 p.m. The EAB will not accept faxed documents after 5:00 p.m. on any business day, nor will the EAB accept documents faxed on Saturdays, Sundays or legal holidays.
- (5) The EAB shall dismiss any application for review which does not conform to the requirements of subsections (a) through (e) of this rule.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.685
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0005; ED 1-1995, f. & cert. ef. 1-9-95; ED 6-1996, f. 10-15-96, cert. ef. 10-21-96; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0065

Filing Dates

- (1) The filing date for any application for review or other document filed with the EAB shall be determined as follows:
- (a) When delivered in person to the office of the EAB, to any Employment Department office in the state of Oregon, or to any other employment security agency in any other state, the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document, shall be the filing date.
 - (b) When filed by mail, the date that the document is deposited in the United States mail, as evidenced by the postmark affixed by the United States Postal Service, shall be the filing date.
 - (c) If faxed, the receipt date stamped or written on the fax transmission by an employee of the EAB or the Employment Department shall be the filing date.
 - (d) If delivered by any other method, the date the document is received, as established by the date stamped or written on the document by an employee of the EAB or the Employment Department, shall be the filing date.
- (2) In the absence of indicia specified in section (1) of this rule, the EAB shall determine the most probable date of filing.
- Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist: ED 1-1995, f. & cert. ef. 1-9-95

471-041-0070

Late Application for Review

- (1) An application for review is timely if it is filed within 20 days after the Employment Department mails the Hearing Decision which is the subject of review. The EAB shall dismiss an untimely application for review, unless the filing period is extended in accordance with this rule.
- (2) If an applicant files a late application for review, the filing period may be extended upon a showing of good cause as provided by ORS 657.875.
- (a) "Good cause" exists when factors or circumstances beyond the reasonable control of the applicant, or applicant's agent, cause the late filing.
 - (b) In addition to showing that good cause existed for the delay, the applicant must establish that the application for review was filed within a "reasonable time." A reasonable time is the time it takes to promptly file an application for review after the reasons or circumstances for the delay have ceased to exist.
 - (3) An applicant may set forth the reasons for filing an untimely application for review in a written statement, which the EAB may consider in determining whether good cause exists to extend the filing period.

(4) If the EAB cannot determine from the written statement whether good cause exists to extend the filing period, the EAB may remand the matter to the Hearings Section of the Employment Department and direct an ALJ to take such testimony as may be necessary to determine whether good cause exists.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0007; ED 1-1995, f. & cert. ef. 1-9-95; Administrative correction 6-2-99; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0075

Acknowledgement of Application for Review

The EAB shall notify all parties that it has received an application for review. After the EAB receives the transcript of the record, parties who have properly requested the opportunity to submit written argument, will be informed of the deadline for filing written argument.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist: ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0080

Presentation of Argument

(1) An applicant may present written argument only if the applicant has stated that intention at the time of filing an application for review or within 20 days of the date the Employment Department mailed the Hearing Decision for which review is sought. A respondent may give notice of intent to present written argument, irrespective of whether the applicant has stated such intent. To do so, a respondent must file written notice of intent within 10 days of the date that the EAB mails its acknowledgement of the application for review, as provided in OAR 471-041-0075. If a respondent files a timely notice of intent to present written argument, the applicant shall be permitted to present written argument as well at that time designated by the EAB. See OAR 471-041-0075.

(2) No party is required to submit written argument. No party shall be penalized in any way for failing to submit written argument, even after having specified intent to do so.

(3) All written arguments shall be legible and submitted in a form capable of being photocopied. A party shall send a true and accurate copy of any written argument to the other parties at the same time the argument is filed with the EAB. The party filing the written argument must certify on the argument that true copies have been sent to all other parties.

(4) Parties may file written arguments with the EAB by mail, by personal service or by fax. The EAB must receive the written arguments within the time limit established by the EAB in correspondence with the parties. See OAR 471-041-0075. Written arguments submitted by fax must be directed exclusively to the office of the EAB, unless otherwise specifically directed or approved by the EAB.

(5) The EAB does not allow responsive briefing.

(6) The EAB will not consider written arguments that do not comply with these rules.

(7) Upon request, or upon its own initiative, the EAB may extend the time period for filing written arguments. Such action shall occur solely within the discretion of the EAB. Under no circumstances will a request for extension of time to file a written argument be granted for more than 14 days from the original date set for filing written argument.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6) & ORS 657.690
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0010; ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0090

Additional Evidence

(1) In conducting a de novo review of the record, the EAB shall consider only the transcript of the hearing before the ALJ, all exhibits

properly received into the record and the substance of written arguments based upon the record.

(2) When there is insufficient information in the record to render a decision, the EAB may remand a case and order the ALJ to take additional testimony or evidence. Such testimony or evidence shall become part of the record.

(3) The EAB may receive into the record exhibits offered by the parties, but not formally received by the ALJ, in order to complete the record.

(4) The EAB may receive into the record any exhibits offered as additional evidence, in the discretion of the EAB, providing that the party offering the additional evidence establishes that:

(a) The additional evidence is relevant and material; and

(b) Factors or circumstances beyond the party's reasonable control caused the party to fail to present the evidence at that time of the hearing before the ALJ.

(5) In order to correct defects in the record, such as unsworn testimony, the EAB may accept sworn affidavits from the parties setting forth the necessary corrections.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.275 & ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0015; ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0100

Decisions

(1) The EAB shall enter a decision to affirm, modify, remand or reverse the hearing decision. Except for remand decisions, the EAB decision shall contain the following:

(a) A caption identifying the parties and their representatives, if any;

(b) Findings of fact;

(c) Conclusions and reasons based upon the findings of fact; and

(d) A statement of rights of appeal to the Oregon Court of Appeals.

(2) The EAB may adopt all or any part of the hearing decision.

(3) The EAB shall mail its decision to all parties, or their representatives, to their last address of record filed with the EAB. A statement of the mailing date of the EAB Decision shall be set forth in each decision.

(4) The EAB may enter an amended decision at any time prior to the date upon which a decision becomes final in order to correct scrivener's error. Such an amended decision will not change the period within which a party must file a petition for review with the Oregon Court of Appeals.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.275 & ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0020; ED 1-1995, f. & cert. ef. 1-9-95

471-041-0110

Official Notice

The EAB may take notice of any fact contained in the files of the Employment Department, and may take notice of any generally cognizable fact or any general, technical or scientific fact within its specialized knowledge.

(2) When the EAB takes official notice of any fact in a decision, the parties shall be notified of the fact and given not less than ten days from the date the decision is mailed to file written objections.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0025; ED 1-1995, f. & cert. ef. 1-9-95

471-041-0120

Withdrawals

At any time prior to the date upon which the EAB enters its decision, an applicant may request, in writing, that the application for review be withdrawn. Upon receiving such a written request for withdrawal, the EAB shall dismiss the application for review.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685

Stats. Implemented: ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0030; ED 1-1995, f. & cert. ef. 1-9-1995

471-041-0130

Case Consolidation

Cases involving multiple parties, similar facts or similar issues may be consolidated at the discretion of the EAB.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 3-1993, f. & cert. ef. 10-1-93; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0035; ED 1-1995, f. & cert. ef. 1-9-1995

471-041-0140

Board Member Participation

(1) No EAB member shall participate in the review of any matter in which the member has a private interest in the outcome, or in which the member holds any bias or prejudice which would impair a fair and impartial review.

(2) At the discretion of the EAB, either three or two members of the EAB may make up a review panel to participate in the review of matters before the EAB.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(3) & ORS 657.685(6)
 Hist.: EAB 1-1983(Temp), f. & ef. 9-14-83; EAB 1-1984, f. & ef. 3-20-84; ED 4-1993, f. & cert. ef. 11-22-93; Renumbered from 472-010-0040; ED 1-1995, f. & cert. ef. 1-9-1995

471-041-0145

Reconsideration

(1) To be valid, any request for reconsideration, by any party, pursuant to ORS 657.290(3) must:

- (a) Be filed in writing with the EAB, in person, by mail or by fax on or before the 10th day after the EAB decision is mailed;
- (b) Explicitly state that the party requests reconsideration;
- (c) Specify the number of the EAB decision for which reconsideration is sought; and
- (d) State the specific reasons or arguments which form the basis of the request.

(2) Additional written arguments concerning requests for reconsideration may be allowed in the discretion of the EAB.

(3) The EAB shall dismiss any request for reconsideration that does not conform to the requirements of this rule.

Stat. Auth.: ORS 183, ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.685(6)
 Hist: ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

471-041-0150

Precedential Decisions

(1) The EAB may certify in a decision that the decision is precedential. A decision may be identified as precedential if the decision contains an interpretation of a statute or administrative rule not previously decided, an application of the law to facts which may apply to a significant number of cases of like nature, or an interpretation which is a deviation from previous decisions of the EAB.

(2) In its discretion, the EAB may request briefs from the parties in cases where it intends to certify a decision as precedential. Additionally, the EAB may solicit amicus briefs from individuals or groups which may have an interest in the outcome of the review.

Stat. Auth.: ORS 183; ORS 657.610 & ORS 657.685
 Stats. Implemented: ORS 657.270, ORS 657.610 & ORS 657.685
 Hist.: ED 4-1993, f. & cert. ef. 11-22-93; ED 1-1995, f. & cert. ef. 1-9-95; ED 5-1999, f. 7-28-99, cert. ef. 8-1-99

DIVISION 42

FEEES

471-042-0005

Cost for Legal Services

(1) Charges for services rendered by counsel or other agent representing the parties shall not be borne by the Employment Department or Employment Appeals Board.

(2) The Employment Division and Employment Appeals Board have no responsibility for securing payment from a person for charges for services in any proceeding.

(3) If counsel charges a fee for representing a claimant and an issue as to the amount of the fee is raised by the claimant or counsel, the Administrator, referee, or the Employment Appeals Board may approve any fee which represents the reasonable value of the services performed by counsel. A written statement setting out the nature and extent of services performed and the amount to be charged for such services shall be submitted with the request for approval of fees. Such fees shall not exceed the schedule for maximum fees hereinafter set forth and shall not be cumulative. Where more than one claimant is represented upon the same issue of law or fact, each such claimant may be charged with the proportionate share of the fee to be charged.

(4) The maximum fee to be charged for services shall be determined by the amount of benefits actually in issue or dispute. For example, the potential benefit rights for the claimant may be \$2,000 for the benefit year, but the issue involved only one or more specific weeks thereof. The amount of benefits in issue or dispute is not \$2,000, but the aggregate of the weeks actually in issue or dispute, or weeks which will be affected by the decision on the issue where the claimant was represented by counsel.

The maximum fee schedule is as follows:

- (a) For an appearance before the Administrator or any authorized representative by a writing or in person after a controversy of law or fact has arisen with respect to a specific claim or claims: 15 percent;
- (b) For appearance before a referee of the Administrator: 25 percent;
- (c) For appearance before the Employment Appeals Board: 30 percent.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.295 & ORS 657.610
 Hist.: IDE 150, f. & ef. 2-9-76

DIVISION 50

FIRST BREAK EMPLOYER INCOME TAX CREDIT PROGRAM

471-050-0001

First Break

(1) The purpose of this rule is to establish guidelines for providing state income tax credits to employers who hire "qualified youths" certified by "community-based organizations" according to the provisions of ORS 315.259.

(2) As used in ORS 315.259, "qualified youth" means an individual who is 14-23 years of age on the date of hire; and

- (a) Is enrolled in or has graduated in the last six months from a federal Job Corps program or alternative education program; or
- (b) Who meets any three of the following criteria:
 - (A) A youth who is considered to be involved in, affected by, or at risk of being affected by socially detrimental activities;
 - (B) A youth whose place of residence falls within a Federal/State Empowerment Zone or Enterprise Community;
 - (C) A youth whose choice of associates suggests involvement in, or risk of involvement in socially detrimental activities;
 - (D) A youth with a juvenile record;
 - (E) A youth who has dropped out of school or is at risk of dropping out;
 - (F) A youth who is known to be using illegal drugs, has a history of illegal drug use, or is affected by illegal drugs;
 - (G) A youth who lives in an area where there is an insufficient social support network (i.e. Boys and Girls Club, Portland Athletic Club, YMCA, YWCA, or other youth organizations); or
 - (H) A youth who has significant barriers to employment (i.e. teen parent, disability or other barriers).

(3) "Community-based organization" means any nonprofit organization, including schools or class groups offering alternative education under ORS 336.615 to 336.665, the federal Job corps, school districts, local commissions for children and families estab-

lished under ORS 417.833, public agencies that maintain a local presence and the Youth Employment and Empowerment Coalition. Among other services that may be provided, a “community-based organization” shall:

(a) Seek to find employment for “qualified youth” as defined in section (2) of this rule;

(b) Have the capacity to track the use of each certificate issued by it to a qualified youth; and

(c) Work with the qualified youth’s employer or subsequent employer to determine the maximum tax credit allowable under the law.

(4) To participate in the First Break program, community-based organizations shall submit an application to the Employment Department. The Employment Department shall determine the form and manner of the application. To qualify for the program, an applicant organization must demonstrate that it meets the definition of a “community-based organization” in section (3) of this rule.

(5) Community-based organizations qualified under section (4) of this rule to participate in the First Break program will receive an initial allotment of certificates as determined by the Employment Department. The Employment Department may choose not to allocate all of the certificates in the initial distribution. In making the determination of the number of certificates to allocate to a qualified community-based organization, the Employment Department shall consider:

(a) The geographic location of the community-based organization;

(b) The anticipated number of qualified youth to be served by the community-based organization during the first year of the program;

(c) The number of job placements by the community-based organization for youth 14–23 years of age during the previous calendar year;

(d) The number of certificates requested by the community-based organization in its application to participate in the program; and

(e) The total number of community-based organizations qualified to participate in the program and the overall limitation of 1500 certificates.

(6) The Employment Department shall review the use of certificates one year after the initial distribution and may recall all or some of the certificates issued to a qualified community-based organization if it is determined that it is unlikely the community-based organization will use all of the issued certificates during the second year of the program.

(7) A certificate that has been canceled under the provisions of ORS 315.259(6)(d) shall be returned to the Employment Department.

(8) Certificates not distributed in the initial distribution under section (5) of this rule, certificates recalled under section (6) of this rule, and certificates returned under section (7) of this rule shall be entered into a common pool of certificates and shall be redistributed by the Employment Department to newly qualified community-based organizations or qualified community-based organizations whose performance under the program demonstrate a likelihood that additional certificates will be used prior to the expiration of the program.

(9) Qualified community-based organizations receiving certificates under the First Break program shall submit quarterly reports to the Employment Department on the use of certificates issued to the organization. The Employment Department shall determine the form and manner of quarterly reports.

Stat. Auth.: ORS 657.610 & ORS 315.259

Stats. Implemented: ORS 315.259

Hist.: ED 3-1997, f. 12-26-97, cert. ef. 12-31-97; ED 7-1999, f. 10-20-99, cert. ef. 10-23-99; ED 4-2000(Temp), f. 8-4-00, cert. ef. 8-6-00 thru 1-28-01

DIVISION 60

HEARING OFFICER PANEL

471-060-0005

Request for Change of Hearing Officer

(1) The purpose of these rules is to establish uniform procedures for the change of assignment of hearing officers.

(2) These words and terms used in OAR 471-060-0005 have the following meanings:

(a) A hearing officer is “assigned” when a written notice is sent to a party or agency naming the hearing officer to preside over a contested case, or the date a party or agency has actual notice of the assignment, whichever is earlier.

(b) “Good cause” is any reason why a hearing officer’s impartiality might reasonably be questioned. It includes, but is not limited to, personal bias or prejudice, personal knowledge of disputed facts, conflict of interest, or any other interest that could be substantially affected by the outcome of the proceeding.

(3) Subject to the time limitations of this rule, every party and agency in a contested case is entitled to request a change of hearing officer. The first request of that party or agency shall be automatically granted. If that party or agency makes a subsequent request, it must show good cause why the hearing officer should not preside over the hearing.

(4) If a hearing officer is assigned 28 or more calendar days before a hearing is scheduled to convene, a request must be sent no later than 14 calendar days after the hearing officer is assigned.

(5) If a hearing officer is assigned 14 or more calendar days before a hearing is scheduled to convene, a request must be sent no later than seven calendar days before the date of hearing.

(6) If a hearing officer is assigned less than 14 calendar days before a hearing is scheduled to convene, a request must be sent no later than seven calendar days before the date of hearing..

(7) If a hearing officer is assigned seven calendar days or less before a hearing is scheduled to convene, and a party or agency has not been given a reasonable opportunity to request a change of hearing officer, a request shall be made by telephone conference call with the Chief Hearing Officer or designee and the party(s) and agency which elect to participate. The request shall be automatically granted if it is the first request. In such a case, a different hearing officer will be immediately assigned or the hearing will be postponed. If it is a second or subsequent request, the party or agency must show good cause why the hearing officer should be changed. The Chief Hearing Officer or designee shall either deny the request, or change the hearing officer, or postpone the hearing. Any request for change of hearing officer made by conference call under this subsection shall be reduced to writing and made part of the record.

(8) Unless otherwise provided by this section, all requests for a change of hearing officer must be in writing and delivered or sent to the Hearing Officer Panel at the mail address, facsimile telephone number, or electronic mail address indicated in the notice of assignment of hearing officer. If a request is delivered, the date of filing is the date stamped on the document by an employee or representative of the Hearing Officer Panel. If a request is sent by mail, the date of filing shall be the postmarked date affixed by the U.S. Postal Service. If a request is sent by facsimile transmission, the date of filing shall be the receipt date encoded on the faxed document. If the request is by electronic mail, the date of filing shall be the receipt date indicated by the computer system. Computation of time shall be as follows: The day of the act from which the period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday, Sunday, or a legal holiday; in this event, the time period runs until the end of the next day. Legal holidays are those identified in ORS 187.010 and 187.020.

(9) The Chief Hearing Officer may exempt an agency or a class of cases from this section. All requests must be in writing.

(10) For all contested cases pending on January 1, 2000, the Chief Hearing Officer shall not assign or change assignments of hearing officers unless the agency on whose behalf the hearing is conducted requests assignment of a hearing officer from the Hearing Officer Panel to continue the conduct and conclude the proceedings of a pending case.

Stat. Auth.: ORS 657.610, ORS 849 & Sec. 11, OL 1999 (HB 2525)

Stats. Implemented: ORS 849 & Sec. 11, OL 1999 (HB 2525)

Hist.: ED 8-1999(Temp), f. 12-29-99, cert. ef. 1-1-00 thru 6-28-00; ED 3-2000, f. 6-23-00, cert. ef. 6-25-00

