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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)
- (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 disclosure 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 & 657.610

Stat. Implemented: ORS 36.224, 36.228, 36.230 & 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, 657.260, 657.265 & 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 permanent 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, e-mailing or faxing a copy of the notice to persons on the Employment Department's mailing list established pursuant to ORS 183.335(7) at least twenty-eight (28) days prior to the effective date.

(3) By mailing, e-mailing or faxing a copy of the notice to the legislators specified in ORS 183.335(15) of this section at least 49 days before the effective date.

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

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

Stats. Implemented: ORS 183.335 & 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; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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, 657.260, 657.265 & 657.610

Stats. Implemented: ORS 657.610 & 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 December 9, 2003, 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 & 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; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.610

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

471-010-0040

Filing Timely Notices

(1) Except as specifically provided or prohibited in OAR 471-040-0005 and in this rule, 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.

(3) When the document is filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing as determined by the Employment Department, shall be the date of filing.

(4) When the document is filed by any other means, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the employee of the Employment Department, Office of Administrative Hearings or Employment Appeals Board who receives the document.

(5) 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; ED 1-2003, f. 2-7-03 cert. ef. 2-9-03; ED 6-2005(Temp), f. 9-16-05, cert. ef. 9-18-05 thru 2-14-06; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

Customer Information and Disclosure

471-010-0050

Definitions

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

(2) “Aggregate information” means:

(a) For information relating to businesses: there must be at least three firms and no one firm makes up more than 80% of the data item being measured;

(b) For information relating to individuals: there must be at least three individuals in each aggregated data group being released.

(3) “Customer” means any employer, individual, 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.

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

(5) “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;

(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.

(6) “Functional control” means supervision by an Employment Department management employee over the work activities of a hosted worker, in the area of the public labor exchange (selecting and referring job seekers on employer openings on jobs listed with the Employment Department, directly assisting employers in listing jobs, and providing marketing or outreach services to the business community).

(7) As used in ORS Chapter 657.665(3)(a), the following terms have the following meaning:

(a) “Governmental planning functions” means duties authorized by law which are undertaken by state, federal, or local government agencies, to facilitate policy decisions about the future. These functions include, but are not limited to, economic or similar modeling, impact analysis, projections, and forecasting;

(b) “Governmental performance measurement functions” means duties authorized by law which are undertaken by state, federal, or local government agencies regarding the success and impact of government programs;

(c) “Governmental program analysis functions” means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the impact and operation of government programs. These functions include, but are not limited to, fiscal analysis, budget analysis, and workload analysis;

(d) “Governmental socioeconomic functions” means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the socioeconomic conditions in which the governmental entity is operating. These functions include, but are not limited to, the analysis of demographic, labor force, employment, and income trends; and

(e) “Governmental policy analysis functions” means duties authorized by law which are undertaken by state, federal, or local

government agencies to determine or better understand the impact of policy choices and decisions. These functions include, but are not limited to, economic impact analysis, trend analysis, and economic or similar modeling.

(8) “Hosted Worker” means a non-Department employee or volunteer who works, at least partially, under the functional control of an Employment Department management staff. The roles and responsibilities as well as the duties and confidentiality implications must be addressed in a written agreement with the Hosted Worker’s actual employer or the Worker if there is no employer.

(9) “Informed consent” means that, prior to collecting or disclosing information from customers:

(a) The customer shall be informed of:

(A) How the information will be used;

(B) The authority which authorizes the collection or disclosure of the information;

(C) Whether the collection or disclosure of the information is mandatory or voluntary;

(D) That any information disclosed will come from state government files;

(E) The effects on the customer, if any, of not allowing collection or disclosure of the information; and

(b) If the information from the customer is to be submitted to the Employment Department by a one-stop delivery system partner for a cross-match with Employment Department information, the customer shall also be informed that:

(A) The information may be shared with the Employment Department; and

(B) The information to be shared may be matched with information from Employment Department records.

(10) “Need-to-Know” means that access to, possession of, or other use of customer-related information is essential in order to carry out official duties. It does not include:

(a) Accessing confidential information to satisfy curiosity, for personal gain, or to provide the information to friends, spouses, relatives or any other unauthorized individual;

(b) Discussing confidential information among co-workers except as needed to perform official duties; or

(c) Disclosing or discussing confidential information on personal time or in non-work settings.

(11) “One-stop delivery system” means the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor’s Office of Education & Workforce Policy.

(12) “One-stop delivery system partner” means entities authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor’s Office of Education & Workforce Policy.

(13) “Party” has the same meaning as in ORS 183.310(6).

(14) “Person” has the same meaning as in ORS 183.310(7).

(15) “Recognized compensation and retirement, relief or welfare laws,” includes, but is not limited to the following:

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

(d) Programs administered by the Family Health Insurance Assistance Program pursuant to ORS 735.722 et. seq.; and

(e) Programs administered by the Department of Human Services, including, but not limited to:

(A) Children, Adults and Families administering;

(i) Foster care maintenance payments for youth administered in conjunction with the Oregon Youth Authority pursuant to ORS 420.810 et. seq.;

(ii) Maintenance payments to individuals with occupational handicaps administered pursuant to ORS 344.511 et. seq.;

(iii) Temporary Assistance to Needy Families; and

(iv) Food Stamps.

(B) Seniors and People with Disabilities.

(16) "Third Party" means an individual or entity other than an agent to whom the customer has authorized and directed disclosure.

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

(18) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 as codified in Public Law 105-220.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 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; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 7-2002(Temp), f. 9-27-02, cert. ef. 9-29-02 thru 3-28-03; ED 4-2003(Temp), f. 3-27-03, cert. ef. 3-29-03 thru 9-24-03; ED 12-2003, f. 9-19-03, cert. ef. 9-21-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05; ED 6-2006, f. 4-21-06, cert. ef. 4-23-06

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 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 requests for a cross-match of records against department records. The department's designated Custodian of Records shall have the final authority to set and approve charges.

(2) The department shall submit invoices for the charges. Programming costs are due upon receipt of billing. The invoice shall note the agency's contract number.

(3) 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; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04

471-010-0052

Information Collection

(1) The department shall only collect and maintain customer information that is relevant and necessary under ORS Chapter 657 and 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 must safeguard the confidentiality of information collected or obtained and disclose only information about the customer necessary under ORS Chapter 657 and 657A.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 657

Hist.: IDE 6-1980, f. & ef. 9-8-80; 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; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01

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, 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 government agencies authorized by ORS Chapter 657;

(d) For the purpose of providing payment of unemployment insurance benefits; or

(e) To state, federal, and local government agencies for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions, consistent with Sections (2) and (3) of this rule.

(2) The department is authorized to disclose confidential information or records for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions by state, federal, or local agencies only if:

(a) The information is only used for planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis purposes;

(b) The information is necessary for the successful performance of those planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis activities; and

(c) The requesting agency's authorizing statute reasonably provides that the agency perform planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis functions.

(3) As used in ORS Chapter 657.665(3)(a), the terms "Governmental planning, performance measurement, program analysis, socioeconomic analysis and policy analysis functions" do not authorize the disclosure of confidential information:

(a) For purposes of mass mailings or marketing;

(b) That was collected by way of surveys conducted for statistical purposes, including those conducted in collaboration with the U.S. Bureau of Labor Statistics;

(c) For program eligibility or enforcement purposes; or

(d) Regarding individual persons, unless those persons have given their informed consent for such disclosure.

(4) 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.

(5) 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;

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

(6) The Department is authorized to disclose confidential information or records to one-stop delivery system partners within the state or local one-stop delivery system if:

(a) An agreement between the Employment Department and the one-stop delivery system partner(s), addressing confidentiality and authorized uses of the customer information, has been completed;

(b) The customer whose information or records are being disclosed has provided informed consent authorizing that the information may be shared or disclosed; and

(c) Notice is provided that a consent, or authorization, is on file within the one-stop delivery system.

(7) 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; or

(b) For Oregon Employment Department wage records, the wage records are identified under the name, social security number or account number of the customer; and

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

(8) 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 authorization under Section (5) of this rule.

(9) The department is authorized to disclose:

(a) Confidential information or records necessary to prepare for a pending hearing to the extent necessary for the proper presentation of an Oregon Unemployment Insurance benefit claim at a hearing before an Administrative Law Judge, 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 records that are part of the official record of the hearing. Information or records submitted but not received into evidence remain confidential and are not subject to disclosure except to the party submitting the information or records.

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

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

(a) In the "discharge of duties" as authorized by the department Director for Oregon Employment Department programs under ORS Chapter 657;

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

(c) 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;

(d) To a court in a civil, criminal or grand jury proceeding to which the State of Oregon is a party;

(e) To authorized personnel of agencies of other states for the purpose of administering federally funded unemployment insurance programs, Temporary Assistance to Needy Families, child support enforcement programs, and food stamps;

(f) 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;

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

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

(12) The department is authorized to publish aggregated information, even if that information is based on confidential records, using the standards in OAR 471-010-0050(2). Customers or one-stop delivery system partners receiving confidential information for

approved purposes are required to adhere to the same confidentiality and aggregation standards that the Employment Department uses.

(13) Oregon Employment Department staff are expected to comply with Oregon child abuse reporting laws under ORS Chapter 419B.010, elderly abuse reporting laws under ORS Chapter 124.060, and patient abuse reporting laws under ORS 677.190.

(14) 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 this rule:

(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.

(15) Drug or alcohol abuse information or records received from federally funded treatment programs, facilities or activities may not be used or redisclosed by the department without the written consent of the patient.

(16) The Workforce Investment Act establishes a one-stop delivery system through which core services are provided, including those of the Wagner-Peyser Act (29 U.S.C. 49 et seq.), and where one-stop delivery system partners work on a collaborative and cooperative basis. The Workforce Investment Act also calls for the state to use Unemployment Wage Records, to the extent possible by state law, for the purpose of evaluation performance outcomes by other one-stop delivery system partners. It is the responsibility of the Director of the Employment Department to disclose all appropriate information to one-stop delivery system partners for necessary delivery of service, program evaluation, and performance measurement purposes. For these purposes, the following activities are within the Director's "discharge of duties":

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

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) The individual for whom information is requested must have given informed consent for the information to be shared;

(C) The information requested shall not be used for eligibility determination, case management, intake, compliance, or any other purposes, except as required by state or federal law; and

(D) There must be an interagency or other applicable agreement with the one-stop delivery system partners that provides for safeguarding of the disclosed information, prohibits re-disclosure of the information without the express consent of the Employment Department, and imposes sanctions for the unauthorized disclosure of confidential information.

(b) Job listing information provided by employers to the Employment Department for the purpose of administering the public labor exchange. At the employer's direction the following information may be shared with job seekers who are interested in a particular job opening:

(A) For "self-refer" job listings, the job will be listed with all needed information displayed directly for all interested job seekers, who may then contact the employer directly; or

(B) For "suppressed" job listings, the needed information is only provided to job seekers who are determined to be qualified for the job listing, and who are then given contact information by the Employment Department or authorized Hosted Workers.

(c) Information, not including employer wage records or employer tax data, necessary for providing services to businesses for activities within the one-stop delivery system or for activities of the regional Workforce Response Teams (described in the Governor's Executive Order #03-16). The information to be shared may include details such as who to contact, planned contact schedules, employer training needs, and results of contacts and telephone calls for coordinated service delivery to the business community if there is an

agreement with the one-stop delivery system partner(s) or the Workforce Response Team. The agreement should provide for steps in safeguarding confidential employer information

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

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) There is an interagency or other applicable agreement with the one-stop delivery system 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 information;

(C) The individual for whom information is requested must have been provided with informed consent; and

(D) The information to be disclosed must be:

(i) Based on the one-stop delivery system partner's "need to know" to perform official duties of their program; or

(ii) The individual job seeker has specifically directed or authorized the sharing of the information.

(17) Oregon Employment Department staff, hosted workers and any other entities or individuals with access to Employment Department information are authorized to access confidential information only on a "need to know" basis, as needed to perform official duties.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 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; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 3-2001(Temp), f. 3-16-01, cert. ef. 3-18-01 thru 9-14-01; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 9-2002(Temp), f. 11-27-02 cert. ef. 12-1-02 thru 5-30-03; ED 9-2003, f. 5-22-03, cert. ef. 5-25-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-010-0055

Sanctions for Unauthorized Disclosure or Redisclosure

(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; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00

471-010-0057

Audit Authority and Written Agreements With Entities Having Access to Employment Department Information

(1) All written agreements with entities other than "Hosted Workers" that have access to Employment Department information shall stipulate that, no less than once a year, the entity shall conduct an audit of the processes by which the entity implements the agreement(s). The audits shall include, but are not limited to:

(a) How access to Employment Department information is granted;

(b) How access to Employment Department information is controlled;

(c) Why access to Employment Department information is granted, based on OAR 471-010-0054(14);

(d) Who is authorized to grant & revoke access to Employment Department information;

(e) What specific programs within the entity need access to Employment Department information;

(f) Which specific positions within the programs referenced in OAR 471-010-0057(1)(e) need access to Employment Department information;

(g) What specific information within the Employment Department information is needed;

(h) Whether access to Employment Department information is granted to contractors, who the contractor is, and why the contractor is being given access; and

(i) What "informed consent" if any, the entity uses when gathering information from its customers.

(2) These audits shall subsequently be submitted to the Employment Department, who shall have final authority to decide compliance with the procedures in OAR 471-010-0057(1).

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665

Hist.: ED 16-2003, f. 12-31-03, cert. ef. 1-4-04

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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657

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

471-010-0070

Workforce Investment Act Methods of Administration

(1) The Employment Department will comply with the equal opportunity and nondiscrimination provisions of Section 188 of the federal Workforce Investment Act and 29 CFR part 37 with respect to all programs and activities conducted as part of the Oregon One-Stop delivery system. This includes staff and employment practices of the staff responsible for implementing and administering the Workforce Investment Act's programs and activities.

(2) Definitions: As used in OAR 471-010-0070, unless the context requires otherwise:

(a) "Investigative activities" means those activities outlined in the Methods of Administration necessary to process a Methods of Administration complaint;

(b) "Methods of Administration" means the documentation filed with the Federal Department of Labor to provide a reasonable guarantee of Oregon's compliance with the Americans with Disability Act, Section 504 of the Rehabilitation Act of 1973 (amended), Section 188 of the Workforce Investment Act, and 29 CFR Part 37;

(c) "Monitoring requirements" means those activities outlined in the Methods of Administration necessary to ensure compliance with the Methods of Administration;

(d) "One-Stop delivery site" means a Workforce Investment Act center designated by a local board, and other certified centers recognized in the Memoranda of Understanding;

(e) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 as codified in Public Law 105-220.

(3) In conducting both programs and activities that are part of the Oregon One-Stop delivery system, the Department will follow the Methods of Administration promulgated by the Governor in accordance with 29 CFR § 37.4. In particular, the Department shall:

(a) Appoint an agency Equal Opportunity Officer to carry out the duties specified in the Methods of Administration and ensure that, if employed less than full-time as the agency Equal Opportunity Officer, any other duties, responsibilities or activities do not create a conflict of interest or the appearance of a conflict of interest with the duties of the agency Equal Opportunity Officer;

(b) Collect data on participants as required by 29 CFR § 37.37 to 37.41 and the Methods of Administration and provide aggregate data to the state Equal Opportunity Officer and the Department of Labor, as required;

(c) Permit the designated state Equal Opportunity Officer to monitor the Department's compliance with the Workforce Investment Act, 29 CFR part 37, and the Methods of Administration by providing the state Equal Opportunity Officer access to:

(A) One-Stop delivery sites, including affiliate sites, from which the Department operates its programs and activities;

(B) Equal Opportunity Notices created by the Department and provided to participants; and

(C) Any contracts, grants, interagency agreements, or other arrangements between the Department and other providers pertaining to programs and activities provided in the One-Stop system; and

(D) Data required to be collected pursuant to paragraph (b).

(d) Develop procedures as necessary to comply with and monitor compliance with the Workforce Investment Act, 29 CFR part 37, and the Methods of Administration by:

(A) The Department and its employees; and

(B) Entities operating programs or activities, or providing services, conducted as part of the Oregon One-Stop delivery system on behalf of the Department, and employees thereof, including training providers.

(e) Ensure that the agency's Equal Opportunity Officer and other appropriate staff attend scheduled periodic training about the Methods of Administration and associated duties; and

(f) Comply with any corrective actions imposed by the Governor for violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act, 29 CFR part 37, and the Methods of Administration and cooperate with any investigative activities or monitoring requirements of the state Equal Opportunity Officer.

(4) Notwithstanding periodic monitoring by the state Equal Opportunity Officer, the Department is responsible for all violations of the nondiscrimination and equal opportunity provisions of the Workforce Investment Act, 29 CFR part 37, and the Methods of Administration committed by:

(a) The Department and its employees; and

(b) Entities operating programs or activities, or providing services, conducted as part of the Oregon One-Stop delivery system on behalf of the Department, and employees thereof, including training providers.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657 & 657.610

Hist.: ED 9-2001, f. 9-14-01, cert. ef. 9-16-01

DIVISION 12

INTERAGENCY SHARED INFORMATION SYSTEM (SIS)

471-012-0005

Interagency Shared Information System Purpose

The Interagency Shared Information System was established for the purpose of collecting, analyzing and sharing statistical and demographic data to facilitate strategies for improving the education, training and employment programs related to enhancing Oregon's workforce system. The Interagency Shared Information System shares aggregate information with participants to allow each participant to develop and evaluate policy and measure performance. The information in the Interagency Shared Information System is exclusively for program and workforce system analysis purposes. The information in the Interagency Shared Information System is not a public record for purposes of ORS 192.410 to 192.505.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & OL 2001 Ch. 524 (SB 400)

Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01

471-012-0010

Definitions

(1) "Participant" means a participating state agency, as listed in ORS 657.732; and other state agencies, governmental entities or private organizations that have applied to be a participating state agency or organization and have been approved to participate in and provide information to the Interagency Shared Information System.

(2) "System administrator" means the Employment Department Director or staff designated by the Employment Department Director to administer the Interagency Shared Information System.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.732

Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

471-012-0015

Data Collection for the Interagency Shared Information System

Participants shall provide data to the Interagency Shared Information System in a format that encodes identifying data, including the client's Social Security number, using a formula unique to the participant, according to protocols established by the system administrator, and based on the objectives articulated in ORS 657.732. Each participant must also ensure that any customer whose information is being submitted has been provided with full disclosure of:

(1) How the information will be used;

(2) The authority which authorizes the solicitation of the information and whether disclosure of such information by the customer is mandatory or voluntary; and

(3) The effects on the customer, if any, of not providing all or any part of the requested information.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.732

Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

471-012-0020

Disclosure of Interagency Shared Information System Data

(1) Interagency Shared Information System data shall only be disclosed in the aggregate consisting of no fewer than six unit records. All disclosures must comply with applicable federal and state law, including any written agreement between the participants and the system administrator.

(2) Participants may view the individual records input by the participant for their own customers, even if fewer than six unit records, provided that such viewing complies with applicable federal and state law.

(3) For purposes of ORS 192.410 to 192.505, the information submitted to the system and the information received from the system is a public record, and the custodian of such information is the participant that submits or receives the information. All requests for reports from the system will be referred to the participant that is the custodian of the records for the purposes of ORS 192.410 to 192.505. If the participating state agency or organization receiving the information is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of the system information sent to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505.

(4) Requests for Interagency Shared Information System data, including reports that are not agency specific, will be reviewed by the system administrator who will accept or reject the requests based on the objectives articulated in ORS 657.732.

(5) All participating agencies and the system administrator shall take appropriate, necessary and prudent steps to prevent unauthorized disclosure or identification of an individual's data, including use of the provisions established by agreement with Interagency Shared Information System participants. Any individual who, without proper authority, discloses confidential information under ORS 657.732 may be disqualified from holding any appointment or employment with the State of Oregon.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.732
 Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

DIVISION 15

PERFORMANCE REPORTING INFORMATION SYSTEM (PRISM)

471-015-0005

Performance Reporting Information System Purpose

The Performance Reporting Information System was established exclusively for the purpose of collecting, analyzing and sharing statistical and demographic data for the development and reporting of the workforce system performance measures. The Performance Reporting Information System is intended to share the data, by agreement, with system participants, as defined in OAR 471-015-0010. For the purposes of ORS 192.410 to 192.505, the custodian of information is the system participant that submits or receives the information. If the system participant receiving the information is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of the system information sent to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.610 & 657.734
 Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

471-015-0010

Definitions

(1) "System participants" means:

(a) Mandatory partners under the federal Workforce Investment Act of 1998 (enacted as P.L. 105-220 and codified as 29 U.S.C. 2801 et seq.) and other one-stop system partners, which may include public bodies and private organizations; and

(b) Public bodies and private organizations that have been approved by the Director of the Employment Department, in consultation with the Education and Workforce Policy Advisor, to participate in the Performance Reporting Information System.

(2) "System administrator" means the Employment Department staff designated by the Employment Department Director to administer the Performance Reporting Information System.

(3) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 (Public Law 105-220).

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.610 & 657.734
 Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

471-015-0015

Data Collection for the Performance Reporting Information System

System participants shall provide data to the Performance Reporting Information System in a format that encodes identifying data, including the client's Social Security number, using a formula unique to the system participant, and according to protocols established by agreement with the system administrator, based on the objectives articulated in ORS 657.734. Each system participant must also ensure that any customer whose information is being submitted has been provided with full disclosure of:

(1) How the information will be used;

(2) The authority which authorizes the solicitation of the information and whether disclosure of such information by the customer is mandatory or voluntary; and

(3) The effects on the customer, if any, of not providing all or any part of the requested information.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.610 & 657.734
 Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03; ED 9-2005, f. 12-29-05, cert. ef. 1-1-06

471-015-0020

Disclosure of Performance Reporting Information System Data

(1) Data from the Performance Reporting Information System shall only be disclosed in the aggregate consisting of no fewer than three unit records, and according to the protocols established by agreement with the system administrator, based on the objectives articulated in ORS 657.734. All disclosures must comply with applicable federal and state law, including any written agreement between the system participants and the system administrator.

(2) The system administrator shall make available that aggregate data necessary for the comprehensive workforce system-wide performance indicators. This data will be made available to all system participants, customers such as employers and job seekers, workforce investment boards and the general public.

(3) System participants may view the individual records input by the system participant for their own customers, provided that such viewing complies with applicable federal and state law.

(4) System participants and the system administrator shall take appropriate, necessary and prudent steps to prevent unauthorized disclosure or identification of an individual's data, including use of the protocols established by agreement. Any individual who, without proper authority, discloses confidential information under ORS 657.734 may be disqualified from holding any appointment or employment with the State of Oregon.

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.610 & 657.734
 Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03; ED 1-2005, f. & cert. ef. 1-20-05

DIVISION 20

EMPLOYMENT SERVICES

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 payment 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 Business & Employment Services online job match 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 listing 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 & 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; ED 6-2004, f. 8-5-04 cert. ef. 8-8-04; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

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 Business & Employment Services online job match 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 listings. A claimant matched to a job listing shall be referred, subject to any applicable state or federal requirements and the employer's referral requirements, to the employer filing the job listing if the claimant is among the qualified job seekers matched to the job listing 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, 657.156 & 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; ED 6-2004, f. 8-5-04 cert. ef. 8-8-04

471-020-0021**Exemptions from Enrollment**

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

(1) Individuals claiming benefits as interstate liable claimants against the State 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;

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

(5) Individuals who are members in good standing of a union that does not allow members to seek non-union work.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.155, 657.156 & 657.159

Hist.: ED 4-1999, f. 6-29-99, cert. ef. 7-4-99; ED 1-2006, f. 1-5-06, cert. ef. 1-8-06

471-020-0025**Self-employment Assistance Program**

(1) As used in ORS 657.158(1)(b), "entrepreneurial training" means training that will develop skills in organizing, operating, and assuming the risk for a business venture.

(2) As used in ORS 657.158(3)(d), "full-time basis" means 40 hours each week.

(3) Any individual eligible for "regular benefits," as defined in ORS 657.158(1)(a), can request to participate in self-employment assistance activities in accordance with ORS 657.158.

(4) Any individual submitting an Application Form to participate in the Self-employment Assistance Program agrees to:

(a) Meet the terms and conditions of ORS 657.156 and 657.158, and OAR 471-030-0034;

(b) Obtain any necessary occupational certifications prior to submitting the Application Form. The Director may waive this requirement when such requirement would be inconsistent with the policy set forth in ORS 657.158; and

(c) Affirm that they are able to complete their initial business plan within a reasonable time, as determined by the local Oregon Small Business Development Center Network representative, in consultation with the Employment Department.

(5) All applications for the Self-employment Assistance Program must:

(a) Be for a business that is legal to operate under Oregon law;

(b) Be for a business that the individual is legally able to operate under Oregon law;

(c) Be for a business that has been reviewed for feasibility by the local Oregon Small Business Development Center Network representative, in consultation with the Employment Department.

Stat. Auth.: ORS 657.610, 657.158 & 657

Stats. Implemented: ORS 657.158

Hist.: ED 5-2005, f. 7-15-05, cert. ef. 7-17-05

471-020-0030**JOBS Plus Program**

(1) As used in ORS 657.925, "JOBS Plus Program" means the processes used and services provided pursuant to OAR 471-020-0020, ORS 657.925 and 411.892.

(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" is an individual who:

(a) Is an Oregon resident;

(b) Has a current Oregon benefit year as defined in ORS 657.010(3), or is being paid benefits provided for by Oregon or federal law extending such benefit year;

(c) Has a balance remaining on the current Oregon benefit year, or is being paid benefits provided for by Oregon or federal law extending such 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) As used in ORS 657.925(6), "at the time of application" means:

(a) If filing in person at a local field office, the process of filling out the forms necessary to file an initial claim for Unemployment Insurance benefits; or

(b) If filing by a method other than filing in person at a local field office, the process of filling out and submitting the forms necessary to file an initial claim for Unemployment Insurance benefits, including, but not limited to, receiving a written claim determination.

(5) As used in ORS 657.925(6) "reviewing the recipient for referral" means the employment services processes outlined in OAR 471-020-0010 through 471-020-0021.

(6) As used in ORS 657.925(6), "reassess the recipient's reemployability" means the process of determining if the Department should refer an unemployment insurance recipient, including those unemployment insurance recipients that are considered "job attached" as defined in OAR 471-020-0010(3), to suitable work under ORS 657.

(7) As used in ORS 411.892(13), “employment development plan” means the claimant reemployment and worker profiling processes used by the Employment Department, including the Individual Service Plan processes.

(8) An unemployment insurance 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.

(9) If an unemployment insurance 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.

(10) If an unemployment insurance 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.

(11) As used in ORS 657.925, an unemployment insurance 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, ORS 657.925, and 411.892.

(12) As used in ORS 411.892(2), “jobs made available to program participants” refers to subsidized positions, which may include:

(a) A recurring training position, provided that the unemployment insurance recipient is aware that the position is a recurring training position, the recurring training position does not displace a regular employee or fill otherwise unfilled positions previously established by the employer; or

(b) A temporary or limited duration position, provided that the unemployment insurance recipient is aware that the position is a temporary or limited duration position, the temporary or limited duration position does not displace a regular employee or fill unfilled positions previously established by the employer.

(13) As used in ORS 411.892(1), an employer may be disqualified from participating in an Employment Department JOBS Plus Program Work Site Agreement when:

(a) The employer fails to follow the terms of a Work Site Agreement entered into with the Employment Department. In all such cases, the Employment Department shall:

(A) Contact the employer regarding the alleged violation of the Work Site Agreement;

(B) Investigate the alleged violation of the Work Site Agreement; and

(C) Send the employer a written determination stating the results of the investigation, and the employer’s right to request a review of the determination.

(b) Authority to disqualify employers from participating in an Employment Department JOBS Plus Program Work Site Agreement shall reside with the Director, the Deputy Director, or the designated Assistant Director for Field Services.

(14) As used in ORS 411.892(1), an employer may be excluded for a period of up to three years from participation in the Employment Department’s JOBS Plus Program when:

(a) The employer fails to abide by program requirements, including a pattern of disqualifications from Work Site Agreements entered into with the Employment Department; a pattern of terminating participants prior to completion of training; or otherwise demonstrates unwillingness to comply with the stated intent of the program. In all such cases, the Employment Department shall:

(A) Contact the employer regarding the alleged violation of the program;

(B) Investigate the alleged violation of the program; and

(C) Send the employer a written determination stating the results of the investigation, and the employer’s right to request a review of the determination.

(b) Authority to exclude employers from participating in the Employment Department’s JOBS Plus Program, including the authority to exclude an employer immediately, shall reside with the Director, the Deputy Director, or the Assistant Director For Business And Employment Services.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.156, 657.159 & 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; ED 8-2001, f. 6-29-01, cert. ef. 7-1-01 thru 12-28-01; ED 16-2001, f. 12-19-01, cert. ef. 12-23-01; ED 1-2002(Temp), f. 1-11-02, cert. ef. 1-13-02 thru 7-12-02; ED 3-2002, f. 4-19-02, cert. ef. 4-21-02; ED 6-2004, f. 8-5-04 cert. ef. 8-8-04

471-020-0035

Job Listings

(1) All jobs listed with the Employment Department’s job listing system must:

(a) Be for an identifiable current job opening, or an identifiable future job opening;

(b) Establish an employer-employee relationship;

(c) Pay at least minimum wage, unless exempted by state or federal law; and

(d) Not contain terms or conditions of employment contrary to state or federal law.

(2) The Employment Department will not list job listings replacing workers that are out of work due to a labor dispute, as defined in OAR 471-030-0097.

(3) No job listing will be accepted that charges a fee to candidates, unless:

(a) The fee is for a drug test and is charged only to individuals who have been offered work contingent on passing the drug test;

(b) The fee is for a physical examination to determine that the job offered is within the physical capabilities of the applicant and is only charged to individuals who have been offered work contingent upon passing the physical examination; or

(c) The fee is for a license, test or check (such as a background check) that is required by statute or law and is charged only to individuals who have been offered work contingent on obtaining the required license or passing the required test or check.

(4) Unless the conditions of any job listing can reasonably be shown to be a “bona fide occupational requirement” (BFOQ), as determined by the Department, all employers making use of the Employment Department’s job listing system will abide by all state and federal laws relating to Equal Employment Opportunity, including prohibition against discrimination on the basis of:

(a) Race, color, or ethnicity;

(b) Religion;

(c) National origin;

(d) Sex;

(e) Age;

(f) Physical or mental disability; or

(g) Marital status.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.705 - 657.725

Hist.: ED 3-2003, f. 2-14-03, cert. ef. 2-16-03; ED 6-2003, f. 4-25-03, cert. ef. 4-27-03; ED 6-2004, f. 8-5-04 cert. ef. 8-8-04

471-020-0040

Discontinuation and Reinstatement of Services To An Employer

(1) The Employment Department may initiate discontinuance of service to an employer who:

(a) Refuses to alter or withdraw job listings containing specifications that are contrary to employment-related law;

(b) Refuses to provide assurances that the jobs offered (and not withdrawn) are in compliance with employment-related laws;

(c) Misrepresents the terms or conditions of employment, or fails to comply fully with assurances made on job listings;

(d) Is found by final determination of an enforcement agency to be in violation of an employment-related law and the Employment Department has been notified of this final determination;

(e) Has violated Employment Department regulations;

(f) Refuses to accept qualified workers referred through the Agricultural Recruitment System;

(g) Refuses to cooperate in the conduct of field checks resulting from referrals on Agricultural Recruitment System listings; or

(h) Repeatedly causes the field office to initiate discontinuation of service procedures.

(2) For employers who are alleged to have not complied with the terms of the temporary labor certification, the Employment

Department shall notify the Department of Labor's Regional Administrator of the alleged non-compliance for investigation and pursuant to § 655.210 consideration of ineligibility for subsequent temporary labor certification.

(3) If services are to be discontinued, a notification shall be sent to the employer. The notification may inform the employer of immediate denial of services pending investigation of allegations if, in the judgment of the Department, continuation of services during the investigation would cause substantial harm to a significant number of workers. In all other cases, the notification will inform the employer that services will be discontinued in twenty working days unless the employer:

(a) Provides sufficient evidence that contradicts the finding of a violation; or

(b) Provides assurances that future actions will be in compliance with the appropriate employment related laws.

(4) The notification from the Employment Department will state that the employer has the right to request a hearing before a hearing officer within the same twenty working days. The option to request a hearing is not available when stoppage of service is the result of final determination by an enforcement agency.

(5) The Employment Department may reinstate service to an employer:

(a) When the Department accepts the employer's presentation of:

(A) Evidence that the policies, procedures, or conditions that led to the discontinuation of services have been corrected and are not likely to recur; or

(B) Evidence that the employer has responded adequately to enforcement agency findings;

(b) Upon the order of an administrative law judge to reinstate service; or

(c) The employer is reinstated by order of the Department of Labor's Regional Administrator or Federal Administrative Law Judge following a hearing.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.705 - 657.725

Hist.: ED 3-2003, f. 2-14-03, cert. ef. 2-16-03; ED 6-2004, f. 8-5-04 cert. ef. 8-8-04

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) & 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 this number to every employer for whom the employee 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; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03

471-030-0017

Defining and Allocating Remuneration, Holidays, and Vacations

(1) Definitions. For purposes of applying ORS 657.100 and 657.150, and as used in this rule:

(a) For the purposes of this rule, "earnings" means remuneration.

(b) Where an employer-employee relationship exists, "remuneration" means all compensation resulting from the employer-employee relationship, including but not limited to wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, tips, gifts and gratuities.

(c) Where no employer-employee relationship exists, "remuneration" means the gross amount of compensation for the product or service, less only the value of tangible components involved in producing or providing the product or service and limited to the tangible components that remain with the party receiving the service or product.

(d) For purposes of ORS 657.150(7), the term "holiday" means those holidays listed in ORS 187.010(1)(b)-(j) and (2), 187.020 and any holiday designated by the employer, union contract or otherwise.

(e) For purposes of ORS 657.150(7), the term "vacation" means a specific period of time, paid or unpaid, during which the individual is freed from work/job/employment duties and responsibilities and is free to use the time away from work for any purpose the individual chooses.

(2) For purposes of section (1) of this rule, except for agricultural labor and domestic service, remuneration shall include the value, determined pursuant to OAR 471-031-0055(3), of compensation paid in any medium other than cash.

(3) Allocating Remuneration: For purposes of ORS 657.100 and 657.150(6) remuneration or an applicable pro-rata share thereof shall be allocated as follows:

(a) In the case of services, allocated to the week in which the service was performed;

(b) In the case of products, allocated to the week in which the product was sold.

(c) If the dates of sale or service are not clearly established, allocation shall be made upon a reasonable estimate provided by the claimant. If the individual cannot or will not provide a reasonable estimate, the remuneration shall be allocated equally over the period during which services were rendered or products were sold.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.100 & 657.150

Hist.: ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

471-030-0020

Retirement Pay, Allocation of Periodic and Lump Sum Payments

(1) For the purposes of ORS 657.205(1) and (2), 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) Except as provided in ORS 657.205(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.

(4) As used in ORS 657.205(3)(b), the term "dislocated worker" has the meaning given in ORS 657.335(1).

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; ED 17-2001, f. 12-19-01, cert. ef. 12-23-01

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 for the Purpose of Extending the Base Year

(1) 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.

(2) For purposes of applying ORS 657.170(2), where the date of the injury and the date on which claimant became temporarily totally disabled are not the same, the three-year time period for seeking a base year extension shall begin at the start of the claimant's period of temporary total disability, not on the date of the injury.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.170

Hist.: IDE 3-1981, f. & ef. 2-16-81; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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

471-030-0034

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 ORS 657.155(1)(a) by completion of such processes as directed by the Director in order to create a full registration for work.

(2) "Full registration for work" as used in this rule, means providing information regarding the individual's job qualifications, skills, training and experience as the Director or an authorized representative of the Director deems necessary to carry out job placement services for the individual.

(3) The provisions of this rule shall not apply to an individual claiming benefits as a "partially unemployed individual" as defined in OAR 471-030-0060.

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; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

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 week except:

(a) An occasional and temporary disability for less than half of the 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 (6) of this rule, every day of the week, 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 week, 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) For the purposes of ORS 657.155(1)(c), an individual is not available for work in any week claimed in which the individual has an opportunity to perform suitable work and fails to accept or report for such work due to illness, injury or other temporary physical or mental incapacity.

(g) 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.

(h) Providing the individual is otherwise eligible for benefits pursuant to OAR 471-030-0036(3)(a) through (g), a person who has been found to be qualified for benefits under the provisions of ORS 657.176(2)(f) or (g) or 657.176(9)(b)(A) 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) Notwithstanding the provisions of OAR 471-030-0036(3), an individual who is the parent, step-parent, guardian or other court/legally-appointed caretaker of a child under 13 years of age or of a child with special needs under the age of 18 who requires a level of care over and above the norm for his or her age, who is not willing to or capable of working a particular shift because of a lack of care

for that child acceptable to the individual shall be considered available for work if:

(a) The work the individual is seeking is customarily performed during other shifts in the individual's normal labor market area as defined by OAR 471-030-0036(6); and

(b) The individual is willing to and capable of working during such shift(s).

(5) (a) For purposes of ORS 657.155(1)(c) an individual is actively 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 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.

(b) For an individual on temporary layoff of four weeks or less with the individual's regular employer:

(A) If the individual had, as of the layoff date, been given a date to return to work, such individual is actively seeking work by remaining in contact with and being capable of accepting and reporting for any suitable work with that employer for a period of up to four calendar weeks following the end of the week in which the temporary layoff occurred. After four calendar weeks have passed following the week in which the temporary layoff occurred, the individual must seek work with other employers in addition to the individual's regular employer.

(B) If the individual had not, as of the layoff date, been given a date to return to work, such individual must immediately actively seek work with other employers, including temporary work opportunities, beginning with the week following the end of the week in which the temporary layoff occurred.

(c) For an individual on temporary layoff of more than four weeks with the individual's regular employer: such individual must immediately actively seek work with other employers, including temporary work opportunities, beginning with the week following the end of the week in which the temporary layoff occurred.

(d) For an individual who is a member in good standing of a union that does not allow members to seek non-union work, such individual is actively seeking work by remaining in contact with that union and being capable of accepting and reporting for work when dispatched by that union.

(6)(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 employees of the adjudicating Employment Department office, 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.

(7) Nothing in this rule shall prohibit an individual who is a citizen, permanent legal resident, or otherwise legally authorized to work in the United States from seeking work in other labor market areas in this or any other state or in any other country in which the individual has authorization to work.

(a) When seeking work in any other state, the geographic area shall be defined by local office employees of that state's Work Force Agency, based on the criteria outlined in section (6) of this rule as though the individual maintained a permanent residence in the labor market where the individual sought work.

(b) When seeking work in any country outside the United States, the geographic area shall be defined by employees of the adjudicating Employment Department office, based on criteria outlined in section (6) of this rule as though the individual maintained a permanent residence in the country where the individual sought work.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.155 & 657.190

Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; IDE 4-1979(Temp), f. & ef. 7-5-79; IDE 5-1979, f. & ef. 8-27-79; IDE 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; ED 5-2003, f. 4-11-03, cert. ef. 4-13-03; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04; ED 1-2006, f. 1-5-06, cert. ef. 1-8-06

471-030-0037

Prevailing Rate of Pay

(1) For the purposes of ORS 657.176(2)(d), and for the purposes of ORS 657.195(1)(b), work is not suitable if the rate of pay is substantially less favorable than the rate prevailing in the locality. A rate of pay is substantially less favorable than the rate prevailing in the locality when the rate of pay is at least ten percent lower than the average rate of pay for similar work in the locality. The average rate of pay prevailing in the locality shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

(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 not suitable if the rate of pay is substantially less favorable than the rate of pay prevailing in the locality. A rate of pay is substantially less favorable than the rate prevailing in the locality when the rate of pay is at least ten percent lower than the average rate of pay for similar work in the locality. The average rate of pay prevailing in the locality shall be determined by employees of the Employment Department adjudicating office using available research data compiled by the department.

Stat. Auth.: ORS 657.610

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

Hist.: IDE 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; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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. An employment relationship exists even in circumstances where the work performed is not subject employment as set forth in ORS Chapter 657. This section does not apply where no employment relationship exists because the worker is an independent contractor or operating an independently established business. 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 individuals working for temporary agencies or employee leasing companies, the employment relationship shall be deemed severed at the time that a work assignment ends.

(b) In the case of absence due to labor dispute, the employee is separated from work on the date there is a complete dissociation from all participation in the labor dispute and no re-employment rights are claimed.

(c) 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.

(d) As used in this rule, the following standards apply to determine whether an “isolated instance of poor judgment” occurred:

(A) The act must be isolated. The exercise of poor judgment must be a single or infrequent occurrence rather than a repeated act or pattern of other willful or wantonly negligent behavior.

(B) The act must involve judgment. A judgment is an evaluation resulting from discernment and comparison. Every conscious decision to take an action (to act or not to act) in the context of an employment relationship is a judgment for purposes of OAR 471-030-0038(3).

(C) The act must involve poor judgment. A decision to willfully violate an employer’s reasonable standard of behavior is poor judgment. A conscious decision to take action that results in a wantonly

negligent violation of an employer’s reasonable standard of behavior is poor judgment. A conscious decision not to comply with an unreasonable employer policy is not misconduct.

(D) Acts that violate the law, acts that are tantamount to unlawful conduct, acts that create irreparable breaches of trust in the employment relationship or otherwise make a continued employment relationship impossible exceed mere poor judgment and do not fall within the exculpatory provisions of OAR 471-030-0038(3).

(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) Leaving work rather than paying union membership dues;

(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;

(F) Resignation to avoid what would otherwise be a discharge for misconduct or potential discharge for misconduct;

(G) Leaving work for self employment.

(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 of pay, the individual has left work without good cause unless the newly reduced rate of pay is ten percent or more below the average rate of pay for similar work in the individual’s normal labor market area. The average rate of pay in the individual’s labor market shall be determined by employees of the

Employment Department adjudicating office using available research data compiled by the department.

(A) This section applies only when the employer reduces the rate of pay for the position the individual holds. It does not apply when an employee's earnings are reduced as a result of transfer, demotion or reassignment.

(B) An employer does not reduce the rate of pay for an employee by changing or eliminating guaranteed minimum earnings, by reducing the percentage paid on commission, or by altering the calculation method of the commission.

(C) An employer does not reduce the rate of pay by loss or reduction of fringe benefits.

(D) If the Employment Department cannot determine the average rate of pay, the provisions of OAR 471-030-0038(4) apply.

(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.

(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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657.176, 657.260, 657.265 & 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; ED 7-2001(Temp), f. 5-17-01, cert. ef. 5-20-01 thru 11-11-01; ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

471-030-0039

Administrative Decisions

(1) Administrative decisions made in compliance with the requirements of ORS 657.267 and 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 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, 657.260, 657.265 - 657.270, 657.335, 657.610, 729 & OL 1993

Stats. Implemented: ORS 657.267, 657.268 & 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" is an individual who has filed an initial, additional, or reopened claim for unemployment insurance purposes within a benefit year or other eligibility period;

(b) An "initial claim" is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period;

(c) "Additional claim" is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) "Reopened claim" is a certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies that there was no employment in any week since last reporting on this claim;

(e) "Backdating" occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment Department or with any other state Workforce agency, or as otherwise provided in this rule.

(2) For the purposes of filing an initial, additional, or reopened claim:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim; or

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

(f) An incomplete certification must be completed and returned within seven business days from the date of notification that the original was incomplete to preserve the original date of filing.

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An authorized representative of the Employment Department shall backdate a claim seven days in all cases when a claimant requests backdating of an initial, additional or reopened claim no later than seven (7) calendar days from the end of the week to which backdating is requested.

(4) A series of claimed weeks is not interrupted and does not require filing a reopened claim solely because the individual failed to file a timely continued claim for one week, provided the continued claim is filed no later than 24 days following the end of the week claimed.

(5) The provisions of this section do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

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; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03

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. & ef. 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

471-030-0044**Systematic and Sustained Search for Work**

(1) For purposes of ORS 657.325(10), the term "systematic and sustained effort to obtain work" means:

(a) "Systematic effort" is a thorough search for work conducted in accordance with a written plan that is calculated to produce positive results and that has been approved by the Director or the authorized representative.

(b) "Sustained effort" is ongoing work-seeking activity personally performed by the individual within each week for which the individual claims benefits and which is reasonably calculated to obtain work at the earliest possible time. Passive availability alone, including registration with a union or unions, a temporary/leasing agency or agencies or a state workforce agency or agencies, does not meet this standard.

(c) To satisfy the requirements of (a) and (b), above, an individual must perform a more diligent and intense effort to obtain work than that required to satisfy eligibility requirements for regular benefits.

(2) An authorized representative of the Employment Department must provide written notice, as outlined in **20 CFR Ch. V Part 615.8(h)(1)–(4)**, of the meaning of the term "systematic and sustained effort to obtain work" to the individual as it applies to the individual's work-seeking activities. The Department must provide this notice prior to any week for which the individual is denied eligibility as a result of the application of this term.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.325

Hist.: ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-030-0045**Continued Claims**

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

(a) "Continued Claim" means an application that certifies to the claimant's completion of one or more weeks of unemployment and to the claimant's status during these weeks. The certification may request benefits, waiting week credit, or non-compensable credit for such week or weeks. A continued claim must follow the first effective week of an initial, additional or reopen claim, or the claimant's continued claim for the preceding week;

(b) A "non-compensable credit week" is a week of unemployment for which benefits will not be allowed but which may qualify as a week allowed toward satisfying a disqualification as provided in ORS 657.215.

(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 by any method approved by the Director.

(3) As directed by the Director, a continued claim must be filed:

(a) In person at any Employment Department office in the state of Oregon. When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) By United States mail. When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) By fax. When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) By Internet. When filed on line, the date of filing shall be the initial date of transmission of the on line continued claim; or

(e) By telephone. When filed by telephone, the date of filing shall be the date marked, stamped, or imprinted on the document by the agency system that records the oral request or by the employee accepting the continued claim.

(4) A continued claim must be filed no later than twenty-four (24) days following the end of the week for which benefits, waiting week credit, or noncompensable credit, or any combination of the foregoing is claimed. If the twenty-fourth day falls on a legal holiday as described in ORS 187.010(1)(b)–(j) and 187.020, the continued claim is timely if filed on the next business day. 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.

(5) The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions.

(6) "Good Cause," as used in section (4) of this rule, exists when satisfactory evidence establishes that factors or circumstances beyond the reasonable control of the claimant caused the late filing. The continued claim must be filed no later than seven days following the date determined by the Director to be the date such factors or circumstances no longer exist.

(7) The provisions of this rule do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 183.335, 657.260, 657.265-270, 657.335, 657.610, 729 & OL 1993

Stats. Implemented: ORS 657.215 & 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; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03

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.: IDE 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 hours of work alleged by the claimant to be missing. If the discrepancy involves only hours of work and the

claimant has provided documentary evidence of hours sufficient to make the claim valid, the Director may issue a redetermination.

(2) If as the result of an investigation additional subject wages or hours 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 hours 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.: IDE 2-1981(Temp), f. & ef. 2-16-81; IDE 4-1981, f. & ef. 4-1-81; ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

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) For purposes of this rule:

(a) A benefit check is "lost" if the claimant never received an issued check, and the check's whereabouts is unknown or it was received and cannot be found.

(b) A benefit check is "stolen" if the claimant never received an issued check, or it was received and the check was taken or cashed by another without the authorization of the payee, whether or not the other person's identity is known.

(c) A benefit check is "destroyed" if an issued check has not been cashed and has been rendered nonnegotiable.

(d) "Forgery" of a benefit check has the same meaning as provided in ORS 165.007 and further defined in 165.002.

(2) If the benefit 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 ten days from the date the original check was issued have elapsed. 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 benefit 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 or the claimant's authorized agent, the Director will so notify the claimant by letter and no replacement check will be issued;

(b) In the case of forgery, or an unauthorized, non-valid or lack of endorsement, a replacement check will be issued if the claimant is due benefits, unless the claimant participated in forgery, received any portion of the benefits, or benefited from the funds.

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

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.255

Hist.: IDE 3-1981, f. & ef. 2-16-81; ED 1-2006, f. 1-5-06, cert. ef. 1-8-06

471-030-0050

Benefit Payments

Benefits shall be paid by such method as the Director may approve. Nothing in this rule shall authorize the delivery of a benefit payment in violation of ORS 657.855.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.255

Hist.: IDE 150, f. & ef. 2-9-76; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

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, 657.315 & 657.320

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

471-030-0052

Misrepresentation Disqualification

(1) An authorized representative of the Employment Department shall determine the number of weeks of disqualification under ORS 657.215 according to the following criteria:

(a) When the disqualification is imposed because the individual failed to accurately report work and/or earnings, the number of weeks of disqualification shall be determined by dividing the total amount of benefits overpaid to the individual for the disqualifying act(s), by the maximum Oregon weekly benefit amount in effect during the first effective week of the initial claim in effect at the time of the individual's disqualifying act(s), squaring the result and rounding it up to the nearest whole number.

(b) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of ORS 657.176, the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or four weeks, whichever is greater.

(c) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings), the number of weeks of disqualification shall be the number of weeks calculated in the same manner as under subsection (a) above, or the number of weeks in which a disqualifying act(s) occurred, whichever is greater.

(d) When the disqualification is imposed because the disqualifying act(s) under ORS 657.215 relates to the provisions of ORS 657.176 and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus four weeks.

(e) When the disqualification is imposed because the disqualifying act(s) relates to the provisions of ORS 657.155 (other than work and/or earnings) and a failure to accurately report work and/or earnings, the number of weeks of disqualification shall be the number of weeks calculated in the manner set forth in subsection (a) plus the number of weeks in which a disqualifying act(s) occurred relating to the provisions of ORS 657.155 (other than work and earnings.)

(2) The number of weeks of disqualification assessed under section (1) of this rule shall be doubled, but not to exceed 26 weeks, if the individual has one previous disqualification under ORS 657.215, and that prior disqualification determination has become final.

(3) Notwithstanding sections (1) and (2) of this rule, the number of weeks of disqualification under ORS 657.215 shall be 26 weeks if:

(a) The disqualification under ORS 657.215 is because the individual committed forgery; or

(b) The individual has two previous disqualifications under ORS 657.215, and those prior two disqualification determinations have become final.

(4) Notwithstanding Sections (1), (2) and (3), an authorized representative of the Employment Department may determine the number of weeks of disqualification according to the circumstances of the individual case, but not to exceed 26 weeks.

(5) All disqualifications imposed under ORS 657.215 shall be served consecutively.

(6) Any week of disqualification imposed under ORS 657.215 may be satisfied by meeting all of the eligibility requirements of ORS Chapter 657, other than ORS 657.155(1)(e).

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.215

Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; ED 10-2003, f. 7-25-03, cert. ef. 7-27-03

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 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 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, 183, 657.610, 657.266, 657.317 & 657.270

Stats. Implemented: ORS 215

Hist.: ED 2-1995, f. 8-29-95, cert. ef. 9-3-95

471-030-0054

Theft Cases

For purposes of satisfying ORS 657.176(3)(b), any person, party or entity may present the Employment Department with the written admission.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.176

Hist.: ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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) Assistant Director for Unemployment Insurance;

(b) Manager of Benefits.

(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.: IDE 150, f. & ef. 2-9-76; IDE 5-1979, f. & ef. 8-27-79; IDE 1-1984, f. & ef. 3-21-84; IDE 2-1984, f. & ef. 9-28-84; ED 1-1987, f. & ef. 1-12-87; ED 5-1992, f. & cert. ef. 12-14-92; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-030-0056

Investigatory Subpoenas

(1) Investigators or their supervisors may issue and cause to be served subpoenas which compel the attendance of witnesses, order the production of any books, papers, contracts, accounts, records,

documents or other physical evidence, or both, as described in but not limited to information in ORS 657.660, 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.

(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).

(3) An employer, employing unit, company or corporation that fails to comply with a subpoena in accordance with ORS 657.660 and this rule, shall be subject to the penalty provided in ORS 657.990(3).

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.660, 657.990

Hist.: ED 1-2006, f. 1-5-06, cert. ef. 1-8-06

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.: IDE 3-1981, f. & ef. 2-16-81; IDE 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; and

(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 Employment Department UI Center, a "Notice and Verification of Partial Unemployment" for such week; and

(b) Mail or fax the completed notice to an Employment Department UI Center 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 & 657.610

Stats. Implemented: ORS 657.255 & 657

Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; ED 2-1992, f. & cert. ef. 6-29-92; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

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 discretionally 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 reemployment 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(3) 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) Assistant Director for Unemployment Insurance;
- (c) Manager of Benefits.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.255

Hist.: IDE 150, f. & ef. 2-9-76; IDE 5-1979, f. & ef. 8-27-79; IDE 3-1981, f. & ef. 2-16-81; IDE 1-1984, f. & ef. 3-21-84; IDE 2-1984, f. & ef. 9-28-84; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0074

School Employees

(1) ORS 657.167 and 657.221 apply only when the individual claiming benefits was employed by the educational institution in the

period immediately preceding the holiday, vacation or recess period. For individuals claiming benefits for a vacation or holiday week, the individual must have been employed by the educational institution in the week immediately prior to the period claimed. For individuals claiming benefits for a customary recess period between academic terms or years, the individual must have been employed by the educational institution in the academic year or term immediately prior to the period claimed. Wages from non-educational employers shall not be considered in making a determination of whether the claimant was employed.

(2) The provisions of ORS 657.167 and 657.221 apply irrespective of whether or not the individual works only during an academic year or works in a year-round position.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.167 & 657.221

Hist.: ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-030-0075

"Reasonable Assurance" Defined

(1) 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.

(2) An individual who receives assurance of performing a greater quantity of the same or similar work after a holiday, vacation or recess period than that performed prior to the vacation, holiday or recess period has received reasonable assurance of performing work in the same or similar capacity.

(3) Where the totality of the employment relationship reasonably assures that an individual will perform services in a same or similar capacity in a subsequent period, the reasonable assurance cannot be ended or abated by any unilateral action of the individual. A decision to quit work, even for good cause, and even if the resignation is accepted by the employer, does not end or abate the reasonable assurance.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.167 & 657.221

Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 1-1984, f. & ef. 3-21-84; IDE 3-1985, f. & ef. 12-16-85; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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 their 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; or

(b) The individual is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season; and

(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.: IDE 151, f. 9-28-77, ef. 10-4-77; IDE 5-1979, f. & ef. 8-27-79; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 2-2006(Temp), f. & cert. ef. 1-12-06 thru 7-11-06; ED 7-2006, f. 7-5-06, cert. ef. 7-9-06

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

471-030-0078

Eligibility for Offshore Workers

(1) As used in this rule, an offshore worker is an individual who resides and seeks work outside the United States, Canada, Puerto Rico or the U.S. Virgin Islands and:

(a) Is a citizen or permanent legal resident of the United States or possesses unexpired documentation of permission to work in the United States, and

(b) Is authorized to work in the country in which the individual is residing and in which the individual is seeking work.

(2) An offshore worker shall not be determined ineligible for benefits under ORS 657.155 solely on the basis of the individual's physical location provided the individual is otherwise eligible for benefits.

(3) An individual is not available for work under ORS 657.155 if the individual's permission to work in the United States or in the country in which the individual now resides or is seeking work has expired, been revoked, terminated or otherwise ended.

Stat. Auth.: ORS 657.610 & 657

Stats. Implemented: ORS 657.155

Hist.: ED 8-2004, f. 12-17-04, cert. ef. 12-19-04

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 as defined by the training provider. 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 the Employment Department Benefits Section — UI Training Programs Unit 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(4) 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 therefore, and shall be served upon the claimant 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:

(A) For purposes of ORS 657.345(1), any worker attending training financed wholly or in part, or directly delivered by, a recipient or subrecipient administering Title 1B of the Workforce Investment Act of 1998 (P.L. 105-220).

(B) For purposes of ORS 657.345(2), any worker identified as dislocated by the Employment Department under ORS 657.335(1).

(b) "Unlikely to return to their previous occupation or industry" includes the following:

(A) The individual has been identified as meeting the Worker Profiling Program participation threshold developed by the Employment Department, or

(B) The individual has been permanently separated from an employer in an occupation identified as declining by the Employment Department in that geographic area in which the claimant resides, or

(C) The individual has been evaluated and referred to training by a vocational rehabilitation provider, including but not limited to Vocational Rehabilitation Division, Workers Compensation Division, or a private insurance carrier.

(c) "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 1B 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 starting date of the professional technical training 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.

(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) 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.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.335 - 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, f. 10-6-00, cert. ef. 10-8-00 thru 4-6-01; ED 5-2001(Temp), f. 4-6-01, cert. ef. 4-7-01 thru 10-4-01; ED 6-2001, f. 4-20-01, cert. ef. 4-22-01; ED 8-2002, f. 11-22-02 cert. ef. 11-24-02; ED 11-2003, f. 7-25-03, cert. ef. 7-27-03; ED 10-2005, f. 12-29-05, cert. ef. 1-1-06

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.

(2) Requests for cancellation may be taken by phone or in writing. Any written request 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, 657.260, 657.265 - 657.270, 657.335, 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; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

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

For purposes of ORS 657.155(1)(c), an individual who is in all respects otherwise eligible for unemployment insurance benefits shall not be denied benefits solely by reason of serving on jury duty provided:

(1) The individual does not miss an opportunity to perform suitable work as a result of jury duty; and

(2) The individual actively sought work during the hours and days of the week in which the individual was not engaged in serving on jury duty.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.155(1)(c)

Hist.: IDE 1-1982, f. & ef. 6-30-82; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-030-0125

Drug/Alcohol Adjudication Policy

(1) Purpose. For purposes of any applicable provision of ORS 657.176, this rule establishes policy for adjudicating cases involving the use, sale, possession or effects of drugs or alcohol in the workplace.

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

(a) For purposes of ORS 657.176(9)(a)(A), “workplace” means the employer’s premises or any place at or in which an individual performs services for the employer or otherwise acts within the course and scope of employment.

(b) For purposes of ORS 657.176(9)(a)(B), an individual “fails or refuses to take” a drug or alcohol test when the individual does not take a drug or alcohol test as directed by the employer in accordance with the provisions of an employer’s reasonable written policy or collective bargaining agreement.

(c) For purposes of ORS 657.176(9)(a) and 657.176(13)(d), an individual is “under the influence” of intoxicants if, at the time of a test administered in accordance with the provisions of an employer’s reasonable written policy or collective bargaining agreement, the individual has any detectable level of drugs or alcohol present in the individual’s system, unless the employer otherwise specifies particular levels of drugs or alcohol in its policy or collective bargaining agreement.

(d) “Performing services for the employer” as used in ORS 657.176(9)(a)(D) and “during work” as used in ORS 657.176(9)(a)(E) mean that an employee is on duty and is, or is expected to be, actively engaged in tasks as directed or expected by the employer for which the employee will or expects to be compensated with remuneration.

(e) For purposes of ORS 657.176(9)(a)(F), an individual “tests positive” for alcohol or an unlawful drug when the test is administered in accordance with the provisions of an employer’s reasonable written policy or collective bargaining agreement, and at the time of the test:

(A) The amount of drugs or alcohol determined to be present in the individual's system equals or exceeds the amount prescribed by such policy or agreement; or

(B) The individual has any detectable level of drugs or alcohol present in the individual's system if the policy or agreement does not specify a cut off level.

(f) An individual fails a test for alcohol or unlawful drugs when the individual tests positive as described in subsection (e) of this section.

(g) For purposes of ORS 657.176(9) and 657.176(13), "unlawful drug" means a drug which is unlawful for the individual to use, possess, or distribute under Oregon law. This term does not include a drug prescribed and taken by the individual under the supervision of a licensed health care professional and used in accordance with the prescribed directions for consumption, or other uses authorized by law.

(h) "Connection with employment" as used in ORS 657.176(9)(a)(F) means where such positive test affects or has a reasonable likelihood of affecting the employee's work or the employer's interest and/or workplace.

(i) For purposes of ORS 657.176(9)(b)(A):

(A) "Recognized drug or alcohol rehabilitation program" means a program authorized and licensed under the provisions of OAR chapter 415, or authorized and licensed under similar provisions in another state.

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

(3) For purposes of ORS 657.176(9)(a), (10), and 657.176(13)(d), a written employer policy is reasonable if:

(a) The policy prohibits the use, sale, possession, or effects of drugs or alcohol in the workplace; and

(b) The employer follows its policy; and

(c) The policy has been published and communicated to the individual or provided to the individual in writing; and

(d) When the policy provides for drug or alcohol testing, the employer has:

(A) Probable cause for requiring the individual to submit to the test; or

(B) The policy provides for random, blanket or periodic testing.

(4) Probable Cause for Testing. For purposes of ORS 657.176(9)(a), an employer has probable cause to require an employee to submit to a test for drugs and/or alcohol if:

(a) The employer has, prior to the time of the test, observable, objective evidence that gives the employer a reasonable basis to suspect that the employee may be impaired or affected by drugs or alcohol in the workplace. Such evidence may include, but is not limited to, bizarre behavior in the workplace, a change in productivity, repeated tardiness or absences, or behavior which causes an on-the-job injury or causes substantial damage to property; or

(b) The employer has received credible information that a worker uses or may be affected by drugs or alcohol in the workplace; or

(c) Such test is required by applicable state or federal law, or an applicable collective bargaining agreement that has not been declared invalid in final arbitration; or

(d) Such test is required or allowed pursuant to a reasonable written last chance agreement.

(5) Random, blanket and periodic testing. For purposes of ORS 657.176(9) and (10):

(a) A "random test for drugs and/or alcohol" means a test for drugs and/or alcohol given to a sample drawn from a population in which each member of the population has an equal chance to be selected for testing.

(b) A "periodic test for drugs and/or alcohol" means a drug and/or alcohol test administered at various intervals.

(c) A "blanket test for drugs and/or alcohol" means a test for drugs and/or alcohol applied uniformly to a specified group or class of employees.

(6) For purposes of ORS 657.176(9)(a) and 657.176(13)(c), no employer policy is reasonable if the employee is required to pay for the cost of the test.

(7) For purposes of ORS 657.176(13)(c), a last chance agreement is a document signed by the employee for the condition of continued employment and is reasonable if:

(a) It is written; and

(b) It contains only reasonable conditions. Reasonable conditions include, but are not limited to, agreeing to remain drug or alcohol free; participating in a rehabilitation program; participating in an employee assistance program, or other similar program; submitting to random, blanket, or periodic drug or alcohol testing to demonstrate that the employee remains drug or alcohol free.

(c) A term requiring an employee to pay for any of the cost of participation in a rehabilitation program is reasonable only if the cost is reasonable in consideration of the employee's ability to pay.

(d) A term requiring an employee to pay for any of the cost of a drug or alcohol test is not a reasonable condition.

(8) Failure to Apply/Failure to Accept:

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

(b) If, after being referred by the Employment Department, an individual does not apply for otherwise suitable work because the employer requires a pre-employment drug or alcohol test, the individual has committed a disqualifying act, unless the individual is required to pay for costs associated with the drug or alcohol test.

(c) If an individual does not accept an offer of otherwise suitable work because the employer requires pre-employment drug or alcohol testing, the individual has committed a disqualifying act, unless the individual is required to pay for the costs associated with the drug or alcohol test.

(9) The employee is discharged or suspended for committing a disqualifying act if:

(a) The employee violates or admits a violation of a reasonable written employer policy governing the use, sale, possession or effects of drugs, marijuana, or alcohol in the workplace, unless in the case of drugs, other than marijuana, the employee can show that the violation did not result from unlawful drug use.

(b) In the absence of a test, there is clear observable evidence that the employee is under the influence of alcohol in the workplace.

(10) Procedures for testing. For purposes of ORS 657.176(9)(a) and 657.176(10):

(a) In the case of a positive blood or urine test for drugs or alcohol, in order to determine whether an individual fails a test, is under the influence, or tests positive, an initial test must be confirmed by a test conducted in a federal or state licensed clinical laboratory.

(b) In the case of a positive breathalyzer test for alcohol, a confirming test is not required.

(11) If the employer discharges or suspends an employee because of use, sale, or possession of drugs or alcohol in the workplace and the employer has no written policy regarding the use, sale, or possession of drugs or alcohol in the workplace, the provisions of OAR 471-030-0038 apply.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.176 & Ch. 792, OL 2003 (SB 916)

Hist.: ED 17-2003, f. 12-31-03, cert. ef. 1-4-04; ED 5-2006, f. 3-9-06, cert. ef. 3-12-06

471-030-0126

Absence Due to Alcohol or Drug Use

(1) "Drug" has the meaning given in ORS 475.005(6);

(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, or authorized and licensed under similar provisions in another state;

(5) "Recognized drug rehabilitation program" means a program authorized and licensed under the provisions of OAR chapter 415, or authorized and licensed under similar provisions in another state.

Stat. Auth.: ORS 657.610

Stats. Implemented.: ORS 657.176

Hist.: ED 1-2004(Temp), f. 4-9-04, cert. ef. 4-11-04 thru 10-8-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-030-0150

Domestic Violence

(1) As used in ORS 657.176(12) and for purposes of this rule, “minor child” means an unmarried person under 18 years of age, including a stepchild or adopted child.

(2) As used in ORS 657.176(12), “domestic violence” means the physical injury, sexual assault or forced imprisonment, or threat thereof, of a person by another who is related by blood or marriage or has a significant relationship with the other person at the present, or who has been related or has had a significant relationship at some time in the past, to the extent that the person’s health, safety or welfare is harmed or threatened thereby.

(3) As used in ORS 657.176(12), “stalking” means:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a minor child in the household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim’s situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a minor child in the household

(4) As used in ORS 657.176(12), “sexual assault” means any unwanted touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(5) As used in ORS 657.176(12), the term “reasonable available alternatives” as used in this section means whatever action or series of actions, that in the perception of the individual, best guarantee the safety of the individual or the minor child.

(6) The effective date for implementing this rule shall be retroactive to June 20th, 2005.

Stat. Auth.: ORS 657.176 & 657.610

Stats. Implemented: ORS 657.176 & HB 2767 (OL 2001)

Hist.: ED 13-2001, f. 11-2-01, cert. ef. 11-4-01; ED 3-2005(Temp), f. & cert. ef. 6-24-05 thru 12-17-05; ED 4-2005(Temp), f. & cert. ef. 7-5-05 thru 12-17-05; ED 7-2005, f. & cert. ef. 12-15-05

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 payment and shall be confined to the issues provided in section (2) of this rule.

(2) A hearing in such cases shall be conducted by an administrative law judge assigned by the Office of Administrative Hearings. The hearing shall be conducted pursuant to OAR chapter 471, division 040, 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 administrative law judge 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; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-030-0210

Interstate Reciprocal Overpayment Recovery Arrangement

(1) The following rules shall govern the Oregon Employment Department in its administrative cooperation with other States adopting similar regulations for the recovery of overpayments.

(2) Definitions: As used in these rules unless the context clearly requires otherwise:

(a) “State” includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(b) “Offset” means the withholding of an amount against benefits which would otherwise be payable for a compensable week of unemployment.

(c) “Overpayment” means an improper payment of benefits, from a State or Federal unemployment compensation fund that has been determined recoverable under the Requesting State’s law.

(d) “Participating State” means a State which has subscribed to the Interstate Reciprocal Overpayment Recovery Arrangement.

(e) “Paying State” means the State under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one State.

(f) “Recovering State” means the state that has received a request for assistance from a “Requesting State.”

(g) “Requesting State” means the State that has issued a final determination of overpayment and is requesting another State to assist it in recovering the outstanding balance from the overpaid individual.

(h) “Transferring State” means a State in which a Combined Wage claimant had covered employment and wages in the base period of a paying State, and which transfers such employment and wages to the paying State for its use in determining the benefit rights of such claimant under its law.

(i) “Liable State” means any state against which an individual files, through another state, a claim for benefits.

(3) Recovery of State or Federal Benefit Overpayments:

(a) Duties of the Requesting State. The requesting State shall:

(A) Send the recovering State a written request for overpayment recovery assistance which includes:

(i) Certification that the overpayment is legally collectable under the requesting State’s law;

(ii) Certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;

(iii) A statement as to whether the State is participating in cross-program offset by agreement with the U.S. Secretary of Labor; and

(iv) A copy of the initial overpayment determination and a statement of the outstanding balance.

(B) Send notice of this request to the claimant; and

(C) Send to the recovering State a new outstanding overpayment balance whenever the requesting State receives any amount of repayment from a source other than the recovering State (e.g., interception of tax refund, etc.).

(b) Duties of Recovering State. The Recovering State shall:

(A) Issue an overpayment recovery determination to the claimant which includes at a minimum:

(i) The statutory authority for the offset;

(ii) The name of the State requesting recoupment;

(iii) The date of the original overpayment determination;

(iv) Type of overpayment (fraud or nonfraud);

(v) Program type (UI, UCFE, UCX, TRA, etc.);

(vi) Total amount to be offset;

(vii) The amount to be offset weekly;

(viii) The right to request redetermination and appeal of the determination to recover the overpayment by offset.

(B) Offset benefits payable for each week claimed in the amount determined under State law; and

(C) Provide the claimant with a notice of the amount offset; and

(D) Prepare and forward, no less than once a month, a check representing the amount recovered made payable to the requesting State, except as provided in section (c) below.

(E) Retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits, whichever is later.

(F) The Recovering State shall not redetermine the original overpayment determination.

(c) Combined Wage Claims. When processing combined wage claims, the following shall apply:

(A) Recovery of Outstanding Overpayment in Transferring State. The paying State shall:

(i) Offset any outstanding overpayment in a Transferring State(s) prior to honoring a request from any other "Participating State" under this Arrangement.

(ii) Credit the deductions against the Statement Of Benefits Paid To Combined Wage Claimants, Form IB-6 or forward a check to the Transferring State as described in (b)(D).

(B) Withdrawal of Combined Wage Claim After Benefits Have Been Paid. Withdrawal of a Combined Wage Claim after benefits have been paid shall be honored only if the combined wage claimant has repaid any benefits paid or authorizes the new liable State to offset the overpayment.

(i) The Paying State shall issue an overpayment determination and forward a copy, together with an overpayment recovery request and an authorization to offset, with the initial claim to the new liable State.

(ii) The Recovering State (which is the new liable State) shall:

(I) Offset the total amount of any overpayment, resulting from the withdrawal of a Combined Wage claim, prior to the release of any payments to the claimant;

(II) Offset the total amount of any overpayment, resulting from the withdrawal of a Combined Wage Claim prior to honoring a request from any other Participating State under this arrangement;

(III) Provide the claimant with a notice for the amount offset; and

(IV) Prepare and forward a check representing the amount recovered to the Requesting State as described in (b)(D).

(d) Cross-Program Offset: The Recovering State shall offset benefits payable under a State unemployment compensation program to recover any benefits overpaid under a Federal unemployment compensation program (as described in the Recovering State's Agreement with the Secretary of Labor) and vice versa, in the same manner as required under subsection (3)(b) and (c) of this Section, as appropriate, if the Recovering State and Requesting State have entered into an agreement with the U.S. Secretary of Labor to implement Section 303(g)(2) of the Social Security Act.

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

Stats. Implemented: ORS 657.275 & 657.685

Hist.: ED 12-2001(Temp), f. 10-12-01, cert. ef. 10-14-01 thru 4-7-02; ED 2-2002, f. 3-29-02, cert. ef. 3-31-02

DIVISION 31

UNEMPLOYMENT INSURANCE 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 all 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; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03

471-031-0015

Corporate Officer and Shareholder Dividends as Wages

Remuneration means and includes any payments, which includes dividends paid to a corporate officer or shareholder to the extent that they are reasonable compensation for services performed for the corporation.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.095 & 657.105 - 657.140

Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 6-2002, f. 9-20-02, cert. ef. 9-22-02

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 "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.

(b) The term "family" means two or more individuals related as parents, stepparents, grandparents, spouses, sons-in-law, daughters-in-law, brothers, sisters, children, stepchildren, adopted children or grandchildren.

(c) The election not to provide coverage 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.

(2) The election is not effective unless approved by the Director of the Employment Department. The Director 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.

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

(4) 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.

(5) 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.

(6) 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.

(7) 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 (2) and (5) of this rule.

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

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.044

Hist.: ED 1-1998, f. 2-20-98, cert. ef. 2-27-98; ED 6-2002, f. 9-20-02, cert. ef. 9-22-02; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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 & 657.105 - 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 & 657.105 - 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 & 657.105 - 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 an 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 & 657.105 - 657.140

Hist.: IDE 150, f. & ef. 2-9-76; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03

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 the employee's 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 employment are not wages.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.115 & 657.125

Hist.: IDE 150, f. & ef. 2-9-76; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03

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, 657.087, 657.095 & 657.105 - 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 & 657.105 - 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 is carried on the employer's 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 30% of the standard CONUS meal rate per day. The rate per day will be rounded to the nearest dollar. The rate per month will be 30 times the rounded daily rate. 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 fair market value thereof.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.095 & 657.115 - 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; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

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.: IDE 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, 657.425 & 657.755 - 657.775
Hist.: IDE 150, f. & ef. 2-9-76; IDE 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 the provisions of chapter 471, division 040.

(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) A request for waiver of the penalty for "good cause," must be in writing. The date of any request for waiver 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.

(10) The effective date for implementing this rule shall be retroactive to June 23rd, 2002.

Stat. Auth.: ORS 183, 657.457, 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; ED 4-2002, f. 6-20-02 cert ef 6-23-02; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-031-0070

Taxes

(1) All employers shall make and file a quarterly tax report except domestic employers, who may report annually. Reports shall be made upon forms provided by the Director. Quarterly taxes shall be payable for each calendar quarter with respect to wages paid within such calendar quarter. Annual taxes shall be payable for each calendar year with respect to wages paid within that calendar year. Quarterly taxes shall be due and payable on or before the last day of the month following the close of the calendar quarter. Annual taxes shall be due and payable on or before the last day of January of the following year. If the due date specified falls upon a Saturday, Sunday, or a legal holiday, then 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 specified 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, 657.457, 657.610 & Ch. 778, OL 1993
Stats. Implemented: ORS 657.457 & 657.504 - 657.575
Hist.: IDE 150, f. & ef. 2-9-76; ED 3-1994, f. 8-24-94, cert. ef. 8-28-94; ED 7-2004, f. 12-17-04, cert. ef. 12-19-04

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, 657.505, 657.515, 657.557, 657.642, 657.663 & 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, the employer 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 the employer's account has been chargeable with benefits. Any period during which benefits were chargeable against an individual account may be combined with the period of membership in the group during 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 each employer's behalf by the agent and the taxes paid on each employer's 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 their relationship with the agent, they shall within ten (10) days thereafter notify the Director. The employer shall continue to be charged their 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 & 657.475

Hist.: IDE 150, f. & ef. 2-9-76; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03

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.

(8) An employing unit may not report the payroll of any other employing unit, except as provided in this rule. For the purposes of ORS 657.095, wages paid by separate employing units may not be aggregated or combined for purposes of reporting payroll unless there is an actual transfer of entity and experience rating as provided by ORS 657.480.

(9) The term "common agent" as defined by federal law, is not recognized for the purposes of ORS 657.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.030 & 657.477

Hist.: IDE 1-1981, f. & ef. 1-15-81; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

471-031-0077

Coemployment/Payrolling

An employing unit may not report the payroll of any other separate employing unit, unless done so under an authorized Common Paymaster plan as set forth in ORS 657.477.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.610 & 657.405 - 657.575

Hist.: ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

471-031-0080

Tax Compromise Policy

(1) 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 of all parties involved and the statutory criteria for a settlement has been met.

(2) The effective date for implementing this rule shall be retroactive to June 23rd, 2002.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.515 & 657.517

Hist.: IDE 150, f. & ef. 2-9-76; ED 4-2002, f. 6-20-02 cert ef 6-23-02; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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 as required by ORS 657.571 and such other reports as may be required by the Director, duly completed in all respects.

(a) If an employer does not record hours worked as part of the payroll system, the employer may provide a reasonable estimate of hours rounded up to the next hour worked by each employee including estimates based on:

(A) Average hours worked in a day, multiplied by the number of days worked;

(B) Average time to complete a piece or component, multiplied by the number of pieces or components completed; or

(C) Total time worked in an average month multiplied by the number of months worked in the quarter. A month of full time work averages 174 hours.

(b) If the estimation methods in (a) do not adequately reflect hours worked in the employer's business, the employer may use reasonable alternative methods of estimating hours. The employer shall keep a record of the method and data used in providing such estimates as required in OAR 471-031-0005(3).

(2) An employer may, with the Director's approval, substitute Electronic Data Processing (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.

(5) The effective date for implementing this rule shall be retroactive to June 23rd, 2002.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.457, 657.570, 657.660 & 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; ED 4-2001, f. 3-23-01, cert. ef. 3-25-01; ED 4-2002, f. 6-20-02 cert ef 6-23-02; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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 it is determined 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; ED 2-2003, f. 2-7-03 cert. ef. 2-9-03

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 Assistant Director for UI 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.

(3) The effective date for implementing this rule shall be retroactive to June 23rd, 2002.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.457 & 657.504 - 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; ED 4-2002, f. 6-20-02 cert ef 6-23-02; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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

471-031-0139

Employing Enterprise and Prohibited Activities

(1) As used in Chapter 657, an employing enterprise is a business, including all of the component parts of the business necessary to carry out day-to-day operations. Formation of a distinct legal entity for any component part of the employing enterprise may be disregarded for purposes of determining the experience rating of the employing enterprise.

(2) For the purposes of ORS 657.480(2)(c), any activity or inactivity that would hide or attempt to hide the actual experience of an employing enterprise as referenced in ORS 657.430 is prohibited.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.462, 657.480, 657.485

Hist.: ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

471-031-0140

Transfer of Experience Determination, Tax Rate, Consolidation

(1) For purposes of ORS 657.480, an employing unit is a total successor to the experience of an employing enterprise when all or substantially all of the components parts of the employing enterprise are transferred to or otherwise acquired by the employing unit, including the employees necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer. If at the time of the purchase or transfer the acquired employing entity is inactive, no transfer of experience shall be allowed.

(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) Combined experience ratings will be calculated as follows:

(a) The tax rate experience will be consolidated for the entire year’s rate determination if the effective date of the transfer occurs on or before June 30;

(b) If the effective date of the transfer occurs after June 30, the experience rate will be consolidated for the next year’s rate determination.

(4) When an employing unit acquires the trade or business of an employer that has received the penalty tax rate under ORS 657.480(3), the penalty tax rate will transfer.

(5) Any transfer or acquisition described in section (1) must be reported to the Employment Department Tax Section within 60 days of the date the transfer or acquisition becomes final.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.435, 657.462, 657.480 & 657.485

Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 2-1989, f. & cert. ef. 10-30-89; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

471-031-0141

Partial Transfer of Experience

(1) Under ORS 657.480(1) A new or existing employing unit is a partial successor to the experience of an employing enterprise when an identifiable and segregable portion of the employing enter-

prise is transferred to or otherwise acquired by the employing unit, including the employees of that portion of the employing enterprise necessary to carry on day-to-day operations and essential business functions in the same manner and for the same purposes as carried on prior to the acquisition or transfer.

(2) 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. Upon determination 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 (2)(a) of this rule.

(3) In a partial consolidation, when both employing units are existing employers, the tax rate experience shall be consolidated.

(a) For the entire year's rate determination if the effective date of the transfer occurs on or before June 30 or

(b) If the effective date of the transfer is after June 30, the experience rate will be consolidated for the next year's rate determination, and

(c) Notify the successor in writing of the tax rate assigned in subsection (3)(a) of this rule, and

(d) Notify the successor in writing of the successorship determination under (3)(b).

(4) The percentage of employment experience attributable to the transfer shall be calculated by dividing the number of employees hired by the successor that are attributable to the transfer 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.

(5) The Director may use other reasonable means of determining the percentage in section (4) that is attributable to the transfer.

(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 (4) 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 (4) 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 (2), (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) When the Employment Department determines that a partial transfer has occurred, the Employment Department shall give the successor notice of the determination and its effects to the partial successor. The partial successor may request a hearing in accordance with the provisions of ORS 657.683.

(12) Notwithstanding sections (2), (3), (4), (5), (6) and (7), when an employing unit acquires a portion of the trade or business of an employer that has received the penalty tax rate under ORS 657.480(3), a proportionate share of the penalty tax rate will transfer and be added to its calculated rate.

(13) Any transfer or acquisition described in section (1) must be reported to the Employment Department Tax Section within 60 days of the date the transfer or acquisition becomes final.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.480

Hist.: ED 1-2000, f. 3-31-00, cert. ef. 4-2-00; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

471-031-0142

Acquiring an Employing Entity: Active or Inactive

(1) When an employer begins business and has or expects to have payroll for employees, or when the Tax Section makes a determination that a business has or expects to have payroll for employees, the Employment Department Tax Section may open an account for purposes under ORS Chapter 657.

(2) The Employment Department Tax Section may close an account when an employer ceases operations and reports the closure of the business to the Tax Section, or when the Tax Section makes a determination that the business is not likely to have additional payroll.

(3) For the purposes of ORS 657.430 and 657.480, when an employing unit acquires a business that no longer has an open account the tax rate assigned the acquiring employing unit will be based solely on the experience of the acquiring employing unit and any of its predecessors.

(4) For the purposes of ORS 657.430 and 657.480, a business with a closed account may request that the Tax Section reopen the account. The Tax Section may reopen a closed account only in circumstances where the business owner entity is the same and where the business activity is the same or substantially the same as prior to the closing.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.610 & 657.405 - 657.575

Hist.: ED 15-2003, f. 12-12-03 cert. ef. 12-14-03; ED 3-2006, f. 2-3-06, cert. ef. 2-5-06

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) Assistant Director for Unemployment Insurance;
- (3) Manager of Tax;
- (4) Supervisor of Central Operations;
- (5) Supervisor of Field Operations.
- (6) Supervisor of Special Projects

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; ED 6-2002, f. 9-20-02, cert. ef. 9-22-02

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, 657.552 & 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 & 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, 657.477 & 657.480

Hist.: ED 2-1989, f. & cert. ef. 10-30-89

471-031-0175

Agricultural Employment

(1) 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.

(2) Except as provided by ORS 657.045(3)(c), processing services which transform an agricultural commodity from its raw or natural state, and services performed with respect to an agricultural product after it has been transformed from its raw or natural state, do not constitute agricultural labor.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.045

Hist.: ED 2-1989, f. & cert. ef. 10-30-89; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-031-0185

Indian Tribes

As used in ORS 657.020, 657.043, 657.044, 657.047, 657.048, 657.050, 657.065, 657.167, 657.221, 657.333, 657.425, 657.505, 657.506 and 657.840, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & HB 3596

Hist.: ED 11-2001, f. 9-28-01, cert. ef. 9-30-01

DIVISION 40

APPEALS

Lower Appeals Procedure

471-040-0005

Request for Hearing

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal.

(2) A request for hearing on an administrative decision related to the payment or amount of unemployment insurance benefits may be filed:

(a) By mail, by fax or by telephone with any Employment Department UI Center or UI Section in Oregon; or

(b) In person at any publicly accessible Employment Department office in Oregon; or

(c) By mail or fax with the Office of Administrative Hearings in Oregon.

(3) A request for hearing on an administrative decision related to unemployment insurance taxes pursuant to ORS 657.683, 657.663, 657.485, and 657.457, must be in writing and may be filed:

(a) By mail or by fax with any Employment Department UI Center, UI Section or the Office of Administrative Hearings in Oregon; or

(b) In person at any publicly accessible Employment Department office in Oregon.

(4) The filing date for any request for hearing shall be determined as follows:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of delivery, as evidenced by the receipt date stamped or written by the agency employee who receives the document, shall be the date of filing.

(b) When filed by mail, the date of filing shall be the postmarked date affixed by the United States Postal Service or, in the absence of a postmarked date, the most probable date of mailing.

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing.

(d) When filed by telephone, the date of filing shall be the date marked or stamped by the agency employee accepting the request for hearing.

(e) When filed by any other means, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the employee of the Employment Department, Office of Administrative Hearings or Employment Appeals Board who receives the document.

(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) This rule is effective for all hearing requests filed after the effective date of this rule.

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

Stats. Implemented: ORS 657.280, 657.610 & 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; ED 7-2003, f. 4-25-03, cert. ef. 4-27-03; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05; ED 6-2005(Temp), f. 9-16-05, cert. ef. 9-18-05 thru 2-14-06; ED 8-2005, f. 12-23-05, cert. ef. 12-25-05

471-040-0007

Contested Case Proceedings Interpretation for Limited English Proficient Persons

(1) This rule applies to the Employment Department's Unemployment Insurance contested case proceedings that require the ser-

vices of an interpreter for a limited English proficient person who is a party or witness.

(2) For purposes of this rule:

(a) A “limited English proficient person” means a person who, by reason of place of birth, national origin, or culture, speaks a language other than English and does not speak English at all or with adequate ability to communicate effectively in the proceedings;

(b) A “certified interpreter” means an interpreter certified under ORS 45.291; and

(c) A “qualified interpreter” means a person who is not certified under ORS 45.291, but is readily able to communicate with the limited English proficient person and who can orally transfer the meaning of statements to and from English and the language spoken by the limited English proficient person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. A qualified interpreter does not include any person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(3) In conducting contested case proceedings under this rule, the Employment Department will comply with the applicable provisions of ORS 45.272 to 45.292.

(4) If a limited English proficient person is a party or witness in a contested case proceeding:

(a) The administrative law judge shall appoint a certified interpreter, if available, to interpret the proceedings to a limited English proficient party, to interpret the testimony of a limited English proficient party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) If a certified interpreter is unavailable, the administrative law judge shall appoint a qualified interpreter.

(c) Notwithstanding subsection (4)(a) of this rule, upon the request of a party or witness, the administrative law judge may appoint a qualified interpreter rather than a certified interpreter if the administrative law judge deems it appropriate under the circumstances.

(d) No fee shall be charged to any party or witness for the appointment and services of an interpreter in a contested case proceeding except as provided by ORS 45.275(5) and subsection (4)(g) of this rule.

(e) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a substitute interpreter may be used as provided in ORS 45.275(5).

(f) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any certified interpreter, except that good cause must be shown for a substitution if the substitution will delay the proceeding. Good cause exists when information in the record establishes that the party or witness would be unable to effectively communicate without the assistance of a substitute interpreter.

(g) Fair compensation for the services of an interpreter shall be paid by the Employment Department except, when a substitute interpreter is used for reasons other than good cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) In determining if a person is a qualified interpreter, the administrative law judge shall consider the following factors to ascertain whether the individual will be able to readily communicate with the limited English proficient person and orally translate the meaning of the statements made from English to the language spoken by the limited English proficient person:

(a) The person’s native language;

(b) The number of years of education the person has in the language to be interpreted and the English language;

(c) The number of years of specialized training that has provided the person with the opportunity to learn and use the language to be interpreted and English;

(d) The amount of time the person has spent in countries where the language to be interpreted is the primary language;

(e) The number of years the person has spent acquiring the ability to read or write, or both, the language to be interpreted and the English language;

(f) The person’s previous experience as an interpreter;

(g) The person’s ability to interpret in a manner that conserves the meaning, tone, level, style, and register of the original statement, without additions or omissions;

(h) The person’s ability to interpret the dialect, slang or specialized vocabulary of the original statement; and

(i) The person’s knowledge of the Oregon Code of Professional Responsibility for Interpreters in Oregon Courts.

(6) In appointing an interpreter under this rule, the administrative law judge shall use a procedure and ask questions or make statements on the record substantially similar to the following:

(a) “Please state your name for the record.”

(b) “Are you currently certified as an interpreter in Oregon in accordance with ORS 45.291 (in the language to be interpreted)?”

(c) “Is there any situation or relationship, including knowing any parties or witnesses in this case, that may be perceived by me, any of the parties, or any witnesses as a bias or conflict of interest in or with the parties or witnesses in this case?” If the prospective interpreter answers affirmatively, the administrative law judge shall inquire further to ascertain whether any disqualifying bias or conflict of interest exists with any of the parties or witnesses.

(d) “Are you able to understand me, the parties, and the witnesses in this proceeding?”

(e) “In your opinion, are the parties and witnesses able to understand you?”

(f) Directed at the parties and witnesses requiring the assistance of an interpreter: “Are you able to understand the interpreter?”

(g) “Are you able to work cooperatively with me and the person in need of an interpreter or counsel for that person?”

(h) If foregoing questions (b), (d), (e), (f), and (g) are answered affirmatively and the administrative law judge is satisfied that the prospective interpreter has no bias or conflict of interest under question (c), then the administrative law judge shall state: “I hereby appoint you as interpreter in this matter.”

(i) If the prospective interpreter is not certified under ORS 45.291, then the administrative law judge shall proceed to determine whether the person is a qualified interpreter, using the criteria set forth in Section 5 of this rule. If a written statement of the prospective interpreter’s qualifications is available, the administrative law judge shall enter that statement into the record. If a written statement of the prospective interpreter’s qualifications is not available, the administrative law judge shall require the prospective interpreter to state his or her qualifications on the record. If the written statement is incomplete, or if the administrative law judge or a party questions the interpreter’s qualifications, the administrative law judge shall require the prospective interpreter to supplement his or her written statement of qualifications by providing additional information regarding the prospective interpreter’s qualifications on the record.

(j) If the administrative law judge determines that the person is a qualified interpreter, then the administrative law judge shall state on the record, “Based on your knowledge, skills, training, or education, I find that you are qualified to act as an interpreter in this matter.” If the administrative law judge is not satisfied that the person is capable of serving as a qualified interpreter, the administrative law judge shall not appoint the person to serve in such capacity.

(k) The administrative law judge will then administer the oath or affirmation for interpreters who are not certified under ORS 45.291: “Under penalty of perjury, do you (swear) (affirm) that you will make a true and impartial interpretation of the proceedings in an understandable manner, using your best skills and judgment in accordance with the standards and ethics of the interpreter profession?”

(l) After receiving the qualified interpreter's oath or affirmation, the administrative law judge shall state: "I hereby appoint you as interpreter in this matter."

(m) On the record, the administrative law judge will then instruct any limited English proficient party or witnesses as follows: "If, at any time during the hearing, you do not understand something, or believe there are problems with the interpretation, you should indicate by interrupting and calling this to my attention."

(7) If the Employment Department is on notice that a limited English proficient person is in need of an interpreter, the Employment Department shall provide notice of the need for an interpreter to the Office of Administrative Hearings which shall schedule that person's contested case proceeding for which notice has been provided with an interpreter. If the Employment Department is not on notice that an interpreter is needed for a limited English proficient person, the limited English proficient person, or that person's representative, must notify the Office of Administrative Hearings of such need in advance of the contested case proceeding for which the interpreter is requested.

(a) If, at the time of or during the contested case proceeding, it becomes apparent that an interpreter is necessary for a full and fair inquiry, the administrative law judge shall arrange for an interpreter and may postpone the proceeding if necessary.

(b) The request for an interpreter may be made orally or in writing to the Office of Administrative Hearings. At the request of the Office of Administrative Hearings such notice may include:

(A) The name of the person needing an interpreter;

(B) Whether the person needing an interpreter is a party or witness in the proceeding; and

(C) The language to be interpreted.

(8) If a party is limited English proficient, English language exhibits are to be handled as follows:

(a) If the limited English proficient party confirms on the record that an interpreter already has interpreted an English language document for the party, the administrative law judge may receive the document into evidence without further interpretation of the document, unless necessary to assist a witness to provide relevant testimony.

(b) If the administrative law judge intends to receive into evidence an English language document that has not been previously interpreted under subsection (8)(a), the administrative law judge shall read the document and allow for contemporaneous interpretation. If the document is lengthy, the administrative law judge need not read into the record clearly irrelevant portions of the document, provided however that the administrative law judge shall summarize the remaining content of the document on the record.

(c) If, at the time of the proceeding, the administrative law judge does not rule on the admissibility of an offered English language document, then the administrative law judge shall read the offered document into the record and allow contemporaneous interpretation, subject to the exception in Section (b). The interpreter shall interpret all such offered documents or portions of such documents read into the record.

(d) If an offer of proof for excluded evidence includes an English language document, the interpreter shall interpret the document, subject to the exception in Section (b), for a limited English proficient party on the record, or off the record if so confirmed on the record by the limited English proficient party.

(e) Offered English language documents that the administrative law judge decides to exclude, in whole or in part, as irrelevant, immaterial, or unduly repetitious do not need to be interpreted. The administrative law judge shall orally summarize the contents of such offered but excluded documents, and the interpreter shall interpret that summary.

(9) A party may offer non-English language documents. If such a document is received into evidence, it shall be translated in writing or read into the record in English by the interpreter. Although the non-English language document will be part of the record, the English version of the document shall be the evidence in the case.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 45.272 - 292

Hist.: ED 4-2006, f. 3-3-06, cert. ef. 3-5-06

471-040-0008

Contested Case Proceedings Interpretation for Individuals with a Disability

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "qualified interpreter" for an individual with a disability means a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability.

(2) If an individual with a disability is a party or witness in a contested case proceeding:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(4) When an interpreter for an individual with a disability is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by administrative law judge, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than good cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The administrative law judge shall require any interpreter for a person with a disability to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under ORS 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability, or assistive communication device for an individual with a disability, must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14-day advance notice.

- (b) The notice to the administrative law judge must include:
- (A) The name of the person needing a qualified interpreter or assistive communication device;
 - (B) The person's status as a party or a witness in the proceeding; and
 - (C) If the request is in behalf of an individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 45.272 - 292
 Hist.: ED 4-2006, f. 3-3-06, cert. ef. 3-5-06

471-040-0010

Late Request for Hearing

For the purposes of ORS 657.875:

- (1) "Good cause" exists when the appellant provides satisfactory evidence that factors or circumstances beyond the reasonable control of the appellant caused the late filing.
- (2) Notwithstanding section (1) of this rule, good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance.
- (3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.
- (4) The appellant shall set forth the reason(s) for filing a late request for hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.
- (5) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

Stat. Auth.: ORS 657
 Stats. Implemented: ORS 657.875
 Hist.: IDE 150, f. & ef. 2-9-76; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07

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, an administrative law judge may set a hearing at a convenient location or convenient locations.
- (5) An administrative law judge may consolidate two or more hearings whenever it appears to the administrative law judge 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 & 657.610
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; IDE 2-1980, f. & ef. 2-5-80; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-040-0020

Subpoenas

- (1) At the timely request of a party or on the administrative law judge's own initiative, an administrative law judge 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) An administrative law judge 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657.610
 Stats. Implemented: ORS 657.280 & 657.610
 Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; IDE 8-1981, f. & ef. 11-2-81; IDE 1-1985, f. & ef. 11-18-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-040-0021

Postponement of Hearing

- (1) At the request of a party or on the administrative law judge's own initiative, an administrative law judge may order, orally or in writing, that a hearing be postponed.
 - (2) A postponement may be granted by Office of Administrative Hearings staff at the request of a party if:
 - (a) The request is promptly made after the party becomes aware of the need for postponement; 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, 657.260, 657.265 - 657.270, 657.335, 657.610 & Ch. 729, OL 1993
 Stats. Implemented: ORS 657.280 & 657.610
 Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 4-1994, f. & cert. ef. 9-2-94; ED 8-2003, f. 5-22-03, cert. ef. 5-25-03; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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 administrative law judge 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, 657.270, 657.317, 657.610, & 183.105(7)

Stats. Implemented: ORS 657.280 & 657.610

Hist.: IDE 2-1980, f. & ef. 2-5-80; ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

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 administrative law judge shall participate in a hearing if the administrative law judge 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 an administrative law judge shall be under oath or affirmation.

(3) The administrative law judge shall conduct and control the hearing. The administrative law judge shall determine the order of the presentation of evidence, administer oaths, examine any witnesses, and may either on the administrative law judge'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 administrative law judge 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 administrative law judge 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 administrative law judge 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 administrative law judge in making the decision. The experience, technical competence, and specialized knowledge of the administrative law judge may be utilized in the evaluation of the evidence presented. The administrative law judge may offer and receive

evidence deemed relevant and essential by the administrative law judge to a fair disposition of the issues.

(7) The administrative law judge may take official notice of judicially cognizable facts. The administrative law judge may take notice of general, technical, or scientific facts within the administrative law judge's specialized knowledge and may take notice of documents, records, and forms retained within the Employment Department's files. The administrative law judge 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 administrative law judge's decision becoming final.

(8) In any hearing, the administrative law judge shall render a decision on the issue and law involved as stated in the notice of hearing. The administrative law judge's jurisdiction and authority is confined solely to the issue(s) arising under the Employment Department Law. Subject to objection by any party, the administrative law judge 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 administrative law judge 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 administrative law judge 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, 657.610 & 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; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-040-0026

Continuance of Hearing

(1) At the request of a party or on the administrative law judge's own initiative, an administrative law judge may order, orally or in writing, that a hearing be continued.

(2) A administrative law judge may grant a continuance at the request of a party if:

(a) The request is made prior to the issuance of the administrative law judge's 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) An administrative law judge other than the one who presided at the first hearing may conduct a continued hearing.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.280, 657.610 & 657

Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-040-0030

Administrative Law Judge's Decision

(1) The administrative law judge shall promptly prepare and serve a written decision after the conclusion of the hearing.

(2) The administrative law judge'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 administrative law judge shall be based upon reliable, probative, and substantial evidence.

(3) The administrative law judge'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 administrative law judge's decision shall be personally delivered or mailed to the parties, or their authorized agents, at their last address of record.

(5) An administrative law judge 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 administrative law judge's decision may be filed by the Director or the Director's designee.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.280, 657.610 & 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; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-040-0035

Dismissals of Requests for Hearing

(1) An administrative law judge may order that a request for hearing be dismissed upon request from the appellant to withdraw the request for hearing.

(2) An administrative law judge 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 administrative law judge's own initiative, an administrative law judge 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, 657.610 & 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; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04

471-040-0040

Reopening of a Hearing

(1) After service of an administrative law judge's written decision as set forth in ORS 657.270, an administrative law judge may reopen the hearing if the party:

(a) Requesting the reopening failed to appear at the hearing;

(b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) "Good cause" exists when the party requesting reopening provides satisfactory evidence that factors or circumstances beyond the reasonable control of that party caused the party to miss the hearing.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge's ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The filing date for a request to reopen shall be determined under OAR 471-010-0040.

(6) The OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision.

(7) Nothing in subsection (3) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(8) This rule is effective for all requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.280, 657.610 & 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; ED 2-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07

471-040-0041

Late Request to Reopen

(1) The period within which a party may request reopening may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) "Good cause" exists when the party provides satisfactory evidence that factors or circumstances beyond the reasonable control of that party caused the late filing.

(3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time.

(5) The filing date for a late request to reopen shall be determined under OAR 471-010-0040.

(6) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(7) The administrative law judge's decision on a late request to reopen shall be in writing and mailed to the parties.

(8) This rule is effective for all late requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657.270, 657.875

Stats. Implemented: ORS 657.280, 657.610 & 657.875

Hist.: ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07

DIVISION 41

APPEALS

Higher Appeals Procedure

471-041-0050

Definitions

(1) "ALJ" means Administrative Law Judge.

(2) "Applicant" means the party on whose behalf the application for review was filed.

(3) "EAB" means the Employment Appeals Board.

(4) "Mail" means United States Postal Service mail.

(5) "OAH" means the Office of Administrative Hearings.

Stat. Auth.: ORS 183, 657.610 & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0060**Application for Review**

(1) An application for review may be filed on forms provided by OAH or the Employment Department and other similar offices in other states. Use of the form is not required, provided the party requests review of a specific hearing decision, or otherwise expresses intent to appeal a specific hearing decision.

(2) An application for review may be filed in person, by mail or by fax to EAB, or any office of the Employment Department, or any Employment Security Agency in any other state or jurisdiction where a party is securing benefits.

(3) An application for review that does not conform to the requirements of this rule is subject to dismissal.

(4) Where an applicant did not appear at the hearing that led to the decision on appeal, EAB and OAH will treat the application for review as a request to reopen the hearing under OAR 471-040-0040, unless the application for review specifically states that the applicant does not wish to have the case reopened. If and when the request to reopen is denied, EAB will conduct a review of the original record based on the original application for review, except where the hearing decision dismissed the hearing request for failure to appear.

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; ED 3-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 5-2004, f. 7-30-04, cert. ef. 8-1-04; ED 8-2006, f. 7-27-06, cert. ef. 7-30-06; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0065**Filing Dates**

(1) Filing dates shall be determined as follows:

(a) If delivered in person, the filing date is the date of delivery, as evidenced by the receipt date stamped or written by the public employee who received the document.

(b) If mailed, the filing date is the date that the document is deposited in the United States mail in an envelope with first class postage, as evidenced by the postmark affixed to the envelope by the United States Postal Service.

(c) If faxed, the filing date is the receipt date stamped or written on the fax transmission by the public employee who receives the document. EAB's normal business hours are Monday through Friday, 8:00 am to 5:00 pm, Pacific Time. If EAB receives a faxed document after 5:00 pm, or on a Saturday, Sunday or legal holiday, it will be marked as received the following business day.

(2) Where the information specified in section (1) of this rule is missing or unclear, the filing date is the date that EAB determines to be the most probable date of filing.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(6)

Hist.: ED 1-1995, f. & cert. ef. 1-9-95; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0070**Late Application for Review**

(1) An application for review is timely if it is filed within 20 days of the date that OAH mailed the hearing decision sought to be reviewed. EAB shall dismiss a late application for review, unless the filing period is extended in accordance with this rule.

(2) The filing period may be extended a reasonable time upon a showing of good cause as provided by ORS 657.875.

(a) "Good cause" exists when the applicant provides satisfactory evidence that factors or circumstances beyond the applicant's reasonable control prevented timely filing.

(b) "A reasonable time" is seven days after the circumstances that prevented timely filing ceased to exist.

(3) The applicant shall include with the application for review a written statement describing the circumstances that prevented a timely filing. Nothing in this rule prevents EAB from referring the matter to OAH for a hearing if in EAB's discretion, a hearing is necessary to EAB's determination under section (2).

Stat. Auth.: ORS 183, 657.610 & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0075**Acknowledgement of Application for Review**

When EAB receives a valid and timely application for review, it shall notify all parties promptly by mail or email.

Stat. Auth.: ORS 183, 657.610 & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0080**Presentation of Argument**

(1) Parties may submit written argument within 20 days of the date that EAB mails or emails the notice required by OAR 471-041-0075.

(2) A party's written argument will not be considered unless it:

(a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXX."

(b) Is received within the time allowed.

(3) Written argument may be delivered in person, by mail, or by fax.

(4) At the discretion of EAB, the time allowed for submitting written arguments under section (1) may be extended for one or more periods, not to exceed a total of 14 days.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(6) & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0090**Additional Evidence**

Information not received into evidence at the hearing will not be considered on review, except, subject to notice and an opportunity to be heard:

(1) Exhibits offered, but not received into evidence, may be received into evidence as necessary to complete the record;

(2) New information may be considered when the party offering the information establishes that:

(a) The new information is relevant and material to EAB's determination; and

(b) Factors or circumstances beyond the party's reasonable control prevented the party from offering the information into evidence at the hearing; and

(3) Notice may be taken of information contained in Employment Department records, generally cognizable facts, and general, technical or scientific facts within EAB's specialized knowledge.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.275 & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0095**Case Consolidation and Voting**

Cases involving multiple parties, similar facts or similar issues may be consolidated. Cases are considered in panels of two or three EAB members. A member shall disqualify himself or herself from participation in any case in which the member has a private interest in the outcome, or a bias likely to impair his or her impartial review.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.685(3), 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. 1-9-95; Renumbered from 471-041-0130, ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0098**Request to Withdraw Application for Review**

An applicant's written request to withdraw an application for review will be allowed unless the request is received after notice of EAB's decision has been issued.

Stat. Auth.: ORS 183, 657.610 & 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; Renumbered from 471-041-0120, ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0100**Notice of Decision**

Notice of EAB's decision shall be by mail or email to each party or its representative at the address of record with EAB and shall include.

- (1) A caption identifying the parties and their representatives,
- (2) Findings of fact,
- (3) Conclusions and reasons,
- (4) A statement of appeal rights, and
- (5) The date that the notice was issued.

Stat. Auth.: ORS 183, 657.610 & 657.685

Stats. Implemented: ORS 657.275 & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

471-041-0120 [Renumbered to 471-041-0098]**471-041-0130 [Renumbered to 471-041-0095]****471-041-0145****Reconsideration**

(1) Any party may request reconsideration to correct an error of material fact or law, or to explain any unexplained inconsistency with Employment Department rule, or officially stated Employment Department position, or prior Employment Department practice.

(2) The request is subject to dismissal unless it:

(a) Includes a statement that a copy has been provided to the other parties. Example: "I certify that on I mailed by first class mail a copy of this document to the opposing party, addressed as follows: ABC Company, 123 Main St., Portland, OR, 9XXXX."

(b) Is filed on or before the 20th day after the decision sought to be reconsidered is mailed.

Stat. Auth.: ORS 183, 657.610 & 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; ED 11-2006, f. 10-26-06, cert. ef. 10-29-06

DIVISION 60**OFFICE OF ADMINISTRATIVE HEARINGS****471-060-0005****Request for Change of Administrative Law Judge**

(1) The purpose of this rule is to establish uniform procedures for the change of assignment of administrative law judges.

(2) The words and terms used in OAR 471-060-0005 have the following meanings:

(a) An administrative law judge is "assigned" when a written notice is sent to a party or agency naming the administrative law judge 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 an administrative law judge'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) Every party and agency in a contested case is entitled to request a change of administrative law judge. 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 administrative law judge should not preside over the hearing. The Chief administrative law judge or designee shall decide all requests.

(4) Notwithstanding section (3), no request shall be granted if a party or agency had a reasonable opportunity to request a change of administrative law judge but did not do so. "Reasonable opportunity" is determined under the totality of circumstances. All requests must be in writing and sent or delivered to the Chief Administrative Law Judge or designee at the mailing address, telephone number, or electronic mail address indicated in the notice of assignment of administrative law judge. Requests may be sent by mail, facsimile transmission, or electronic mail.

(5) The Chief Administrative Law Judge may exempt an agency or a class of cases from this section. All requests must be in writing.

(6) For all contested cases pending on January 1, 2000, the Chief Administrative Law Judge shall not assign or change assignments of administrative law judges unless the agency on whose behalf the hearing is conducted requests assignment of an administrative law judge from the Office of Administrative Hearings to continue the conduct and conclude the proceedings of a pending case.

Stat. Auth.: ORS 657.610 & Ch. 849, Sec. 11, OL 1999 (HB 2525)

Stats. Implemented: Ch. 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; ED 2-2001, f. 1-26-01, cert. ef. 1-28-01; ED 18-2003, f. 12-31-03, cert. ef. 1-4-04