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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED

05/21/2024 11:16 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Repeals outdated rules relating to public records requests.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/10/2024 5:00 PM

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

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

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NEED FOR THE RULE(S)

The repeal of these rules is necessary for the Bureau to update its public records processes. These rules have not been meaningfully updated in nearly 10 years. The repeal of these rules will allow the Bureau to develop written policies and procedures, consistent with ORS 192.324 and ORS 192.407.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon's Public Records Law is available here: https://www.oregonlegislature.gov/bills_laws/ors/ors192.html.

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

The repeal of these rules is unlikely to affect racial equity in this state. However, the repeal of these rules will eliminate unnecessary fees, outdated calculation methods and the use of obsolete media. As a consequence, the repeal of these rules is likely to increase access to public records and have a positive impact on economic equity in this state, by creating a legal framework that is consistent with the modern version of Oregon's public records law.

FISCAL AND ECONOMIC IMPACT:

In isolation, the repeal of these rules is likely to have a positive fiscal and economic impact on individuals seeking public records from the Bureau, by eliminating specifically applicable fees. It is, however, likely that these rules will be replaced by policies and procedures described in ORS 192.324 and ORS 192.407. While those policies and procedures are likely to impose some costs on public records requestors, any costs imposed under those policies and procedures will be imposed consistent with ORS 192.311 to 192.478.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the

rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Any person as defined in ORS 192.311 who seeks public records from the Bureau is likely to be impacted by the repeal of these rules. According to the Oregon Employment Department, there are nearly 165,000 small businesses in Oregon with at least one payroll employee. The repeal of these rules would apply to any of these 165,000 small businesses that requests public records. The repeal of these rules do not impose any reporting, recordkeeping or administrative activities. The related cost of professional services, equipment supplies, labor and increased administration required to comply with the repeal of these rules is likely to be zero. However, as indicated above, it is likely that these rules will be replaced with a public records policy described in ORS 192.311 to 192.478.

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

Small businesses, as well as all members of the public, are invited to comment on the repeal of these rules. In addition, the Bureau will post notice of this rulemaking on its webpage and in the Oregon bulletin, while also disseminating this notice to the Bureau's mailing list.

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

Given the resources available to the Bureau, and the scope of changes in this rulemaking notice, it is likely that this notice is the most efficient mechanism by which to receive feedback on the repeal of these existing, but antiquated, rules.

RULES PROPOSED:

839-030-0000, 839-030-0010

REPEAL: 839-030-0000

RULE SUMMARY: Repeals outdated rule relating to public records requests.

CHANGES TO RULE:

~~839-030-0000~~

~~Public Records Requests: Purpose and Scope~~

~~(1) The policy of the State of Oregon gives every person the right to inspect the public records of a public body in this state, as provided in ORS 192.420.¶~~

~~(2) These rules govern Bureau of Labor and Industries procedures for processing public records requests.¶~~

~~(3) In any public records matter not governed by these rules, the Commissioner of the Bureau of Labor and Industries will exercise discretion under the law.¶~~

~~(4) As used in these rules:¶~~

~~(a) "Bureau" means the Bureau of Labor and Industries;¶~~

~~(b) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.~~

~~Statutory/Other Authority: ORS 651.060(4)~~

~~Statutes/Other Implemented: ORS 192.420 - 192.430~~

RULE SUMMARY: Repeals outdated rule relating to public records requests.

CHANGES TO RULE:

839-030-0010

Public Records Requests: Policy, Procedures, Definitions, Fees-

- (1) The bureau will make available any public record requested by any person pursuant to ORS 192.420, unless the record requested is exempt from disclosure under the provisions of ORS chapter 192 or other applicable law.¶
- (2) Forms for making public record requests may be obtained from the bureau's website or the bureau's Custodian of Records.¶
- (3) Upon receipt of a request for public records, as soon as practicable and without unreasonable delay, bureau staff will respond to the requester acknowledging receipt of the request and advising the requester of one of the following:¶
- (a) The bureau is the custodian of at least some of the requested public records, the form in which the records are available, and that those not exempt from disclosure under ORS 192.410 to 192.505 will be provided;¶
- (b) The bureau does not possess, or is not the custodian of, the public record;¶
- (c) The bureau is uncertain whether it possesses the public record and will search for the public record and make an appropriate response as soon as practicable; or¶
- (d) More information is needed to fill the request.¶
- (4) When the bureau determines it is the custodian of a requested public record under subsection (3)(a) of this rule, the bureau's response will also include:¶
- (a) An estimate of the time the bureau requires before the records may be inspected or copies will be provided and an estimate of the fees the requester must pay under this rule as a condition of receiving the records, along with the manner of calculating the fees; or¶
- (b) A statement that an estimate of the time and fees for disclosure of the records, along with the manner of calculating the fees, will be provided within a reasonable time.¶
- (5) The bureau may take a reasonable period of time to locate and retrieve the requested information.¶
- (6) The bureau may charge a fee reasonably calculated to reimburse the bureau for the actual costs of providing and conveying copies of public records. If for operational or other reasons the bureau uses the services of an outside facility or contractor to photocopy requested records, the bureau may charge the actual costs incurred.¶
- (7) After providing a written estimate of the fees the requester must pay as a condition of receiving the records, the bureau may require written confirmation that the requester wants the bureau to proceed with making the public record available and the form in which the requester wants the record to be made available. The bureau may require that the fees be paid before the bureau provides the records.¶
- (8) As used in these rules:¶
- (a) "Page" refers to paper either 8 1/2 x 11 inches or 8 1/2 x 14 inches. Staff will not reduce size, or otherwise manipulate records to fit additional records on a page, unless staff concludes that it will be the most effective use of their time. A double-sided copy is charged as two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per-page fee;¶
- (b) "Normal and reasonable" staff time is 10 minutes or less per request.¶
- (9) If the time required to provide the records requested exceeds normal and reasonable staff time, the actual costs of staff or supervisor time necessary for locating, reviewing, separating, redacting, photocopying, certifying and preparing records for mailing or other delivery or monitoring the review of records will be charged for each hour or fraction thereof as follows:¶
- (a) Office Specialist 2: \$31.97 per hour;¶
- (b) Administrative Specialist 1: \$34.34 per hour;¶
- (c) Administrative Specialist 2: \$37.08 per hour;¶
- (d) Civil Rights Field Rep 1: \$38.48 per hour;¶
- (e) Civil Rights Field Rep 2: \$43.19 per hour;¶
- (f) Wage and Hour Compliance Specialist: \$43.19 per hour;¶
- (g) Apprenticeship Representative: \$43.19 per hour;¶
- (h) Compliance Specialist 2: \$46.82 per hour;¶
- (i) Compliance Specialist 3: \$55.07 per hour;¶
- (j) Training and Development Specialist 2: \$50.75 per hour;¶
- (k) Operations and Policy Analyst 2: \$50.75 per hour;¶
- (l) Administrative Law Judge 3: \$77.38 per hour;¶
- (m) Principal Exec/Manager A: \$46.47 per hour;¶
- (n) Principal Exec/Manager C: \$54.86 per hour;¶

- (o) Principal Exec/Manager E: \$67.85 per hour;¶
 - (p) Principal Exec/Manager F: \$74.04 per hour;¶
 - (q) Principal Exec/Manager G: \$84.44 per hour; and¶
 - (r) The total hourly rate for any other classifications used in processing the public records request.¶
 - (10) In addition to staff time, the bureau will charge for supplies and use of equipment for producing records as follows:¶
 - (a) Twenty-five cents (25¢) per page for black and white photocopies and sixty cents (60¢) per page for color copies to recover the costs of photocopying;¶
 - (b) The actual cost for postage or other delivery costs.¶
 - (c) Fifty cents per page for copies provided by facsimile (fax) machine with a limit of 20 pages.¶
 - (11) Charges for copies of Civil Rights Division closed investigative files are calculated based on the weight of the file.¶
 - (12) For electronic public records, the requester must use blank reproduction media provided by the bureau. The bureau will provide blank reproduction media at the following rates:¶
 - (a) Video cassettes, 2 hours: \$6.00 each;¶
 - (b) Audio cassettes: \$2.00 each;¶
 - (c) Compact disks: \$2.00 each;¶
 - (d) Flash drives/USB drives: \$7.50 each.¶
 - (13) The costs of any necessary Attorney General review of requested public records will be charged to the requester at the rate billed by the Department of Justice to the bureau.¶
 - (14) The bureau may require that all fees assessed pursuant to this rule be paid in cash, in exact change, prior to furnishing any copies, material or information.¶
 - (15) When a request is made to inspect records, the bureau may impose restrictions regarding the location where the requested information will be made available for inspection. When the bureau allows the person requesting the information to search or inspect bureau records, the bureau may, as it deems necessary for the protection of the records, assign an employee to supervise the search or inspection. The charge for this service will be in accordance with section (9) of this rule.¶
 - (16) The bureau may enter into agreements to provide routine, periodic reports in a consistent format for a negotiated price.¶
 - (17) The commissioner may waive the requirements to pay part or all of the fees described in this rule if the commissioner determines that the waiver or fee reduction is in the public interest because making the record available primarily benefits the general public.¶
 - (a) The commissioner may require that a request for a fee waiver or reduction be submitted in writing.¶
 - (b) In determining whether making the record available primarily benefits the general public, relevant factors include, but are not limited to:¶
 - (A) The requester's identity;¶
 - (B) The intended use of the information;¶
 - (C) The character of the information;¶
 - (D) Whether the requested information is already in the public domain;¶
 - (E) Whether the requester can demonstrate the ability to disseminate the information to the public;¶
 - (F) The requester's inability to pay, although this alone is not sufficient basis to waive a fee.¶
 - (c) Even if the commissioner determines that making the record available primarily benefits the general public, the commissioner has discretion whether to grant a fee waiver or reduction. With respect to a particular records request, factors relevant to that discretion include, but are not limited to:¶
 - (A) Financial hardship on the agency;¶
 - (B) Impact on the operations of the agency including but not limited to use of staff time, equipment and supplies;¶
 - (C) Extent to which inspection of records would be sufficient for the public interest or the particular needs of the requester;¶
 - (D) Volume of records requested; and¶
 - (E) The necessity of segregating exempt from non-exempt materials.
- Statutory/Other Authority: ORS 651.060(4)
 Statutes/Other Implemented: ORS 192.410–192.505