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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839  
BUREAU OF LABOR AND INDUSTRIES

**FILED**

11/06/2024 9:47 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: CORRECTED FILING: Authorizes email service in contested case proceedings conducted by the Bureau.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/27/2024 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)

These rule amendments are necessary to allow for increased efficiency in contested case proceedings conducted by the Bureau.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

No documents were relied upon in the development of this rule.

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

These rule amendments will allow parties in contested case proceedings conducted by the Bureau to voluntarily choose to receive service via email. This may result in a marginal improvement in the efficiency with which these cases are resolved and a reduction in related costs. These intended process improvements are unlikely to have a meaningful impact on racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

These rule amendments are likely to have a positive fiscal and economic impact for those litigants that have access to email. For any litigants who do not, these rule amendments are unlikely to have any fiscal or economic impact.

COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

State agencies, units of local governments and members of the public who are employers or employees and who are involved in litigating contested cases before the Bureau may be impacted by the positive fiscal and economic impacts described above. The Bureau estimates that 100 small businesses of all types are annually parties to contested cases conducted by the Bureau and who may benefit from these rule amendments. The Bureau anticipates minimal to no reporting, recordkeeping or administrative activities and costs associated with these rule amendments. Modern email programs are likely to record email exchanges without any additional costs. Any reporting activities associated with voluntarily authorizing email service or informing the parties and administrative law judge of this decision can be performed via email and are unlikely to impose any additional costs. For these reasons, the Bureau does not estimate any increased costs of professional services, equipment supplies, labor or increased administration are necessary to comply with these rules.

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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 these rule amendments. 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.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

839-050-0020, 839-050-0030

AMEND: 839-050-0020

RULE SUMMARY: Amends rule to authorize email service and to modify definition of "complainant."

CHANGES TO RULE:

839-050-0020

Definitions ¶¶

Unless the context requires otherwise, the following definitions apply to OAR 839-050-0000 through 839-050-0445:¶¶

(1) "Administrative Law Judge" means the Commissioner or an individual or a special tribunal designated by the Commissioner to preside over any or all aspects of a contested case proceeding including motions, oral or written hearings, preparation of the Proposed Order and assistance in preparation of the Final Order. The Administrative Law Judge may or may not be an employee of the Agency, except that when a case involves a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the Administrative Law Judge or anyone appointed as a hearings officer or member of a special tribunal to hear the matter must be an employee of the Agency.¶¶

(2) "Administrative Prosecution Unit" means the section of the Bureau of Labor and Industries handling the administrative prosecution of contested case proceedings.¶¶

(3) "Administrative Prosecutor" means the Agency staff person assigned to prosecute contested case proceedings for the Agency and to handle all related matters, but does not include counsel for the Agency.¶¶

(4) "Agency" means the Bureau of Labor and Industries and any employee thereof, and includes the bureau when acting as the agent of another governmental entity, but for the purposes of these rules does not refer to the Administrative Law Judge, Contested Case Coordinator, or the Commissioner.¶¶

(5) "Aggrieved person"¶¶

(a) For the purpose of proceedings involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, includes, but is not limited to, a person who believes that the person either:¶¶

(A) Has been injured by an unlawful practice or discriminatory housing practice; or¶¶

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.¶¶

(b) For the purpose of a complaint filed by the Commissioner or the Attorney General, is a person on whose behalf the complaint is filed.¶¶

- (c) A person who is, or was at any time, eligible to file a complaint under ORS 659A.820 or who is otherwise similarly situated.¶
- (d) A person who files a complaint personally or through an attorney under ORS 659A.825.¶
- (e) For the purpose of prevailing wage rate determinations, is an "aggrieved person" as defined at OAR 839-050-0445.¶
- (6) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, including fiduciaries, mutual companies, trusts and unincorporated organizations, or an authorized officer or employee of a governmental agency who has been authorized by the partnership, corporation, association, organized group, or governmental agency to represent that entity during the contested case proceeding.¶
- (7) "Charging document" means any document issued by the Bureau of Labor and Industries stating that any person, entity, or government agency has violated the laws within this Agency's jurisdiction and includes, but is not limited to:¶
- (a) Formal Charges;¶
- (b) Order of Determination;¶
- (c) Notice of Intent to Revoke License;¶
- (d) Notice of Intent to Deny License;¶
- (e) Notice of Intent to Refuse to Renew a License;¶
- (f) Notice of Intent to Place Name on List of Ineligibles;¶
- (g) Notice of Intent to Assess Civil Penalties;¶
- (h) Notice of Intent to Suspend or Revoke License or to Assess Civil Penalty in Lieu Thereof.¶
- (8) "Chief Prosecutor" is the Administrative Prosecutor responsible for managing the Administrative Prosecution Unit. The Chief Prosecutor may also administratively prosecute cases on behalf of the Agency.¶
- (9) "Claimant" means any individual who has filed a wage claim pursuant to ORS chapter 652 or 653 and who has assigned that claim to the Commissioner.¶
- (10) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.¶
- (11) "Complainant" means an individual who has, or whose attorney has, filed a complaint pursuant to ORS chapter 279C, 652, 653, 658 or 659A, chapters 652 and 653, chapter 279C, and any other or any other laws, regulations or ordinances enforced by the bureau, including laws or, regulations or ordinances, enforced by the bureau as the agent of another governmental entity.¶
- (12) "Contested Case Coordinator" means the Bureau of Labor and Industries staff person who receives and maintains all records filed with the Forum in contested cases, issues official contested case documents, and provides administrative support to the Forum and the Administrative Prosecution Unit.¶
- (13) "Counsel" means an attorney who is in good standing with the Oregon State Bar or the Bar of another state who is granted permission by the Administrative Law Judge to appear in the matter pursuant to ORS 9.241 and Oregon Uniform Trial Court Rule 3.170. Oregon counsel who request permission for the appearance of an out-of-state attorney must participate meaningfully in the case in which the out-of-state attorney appears.¶
- (14) "Counsel for the Agency" means the Oregon Attorney General, the Oregon Attorney General's designee, or separate counsel as authorized by the Oregon Attorney General pursuant to ORS 180.235(4).¶
- (15) "Forum" means the Administrative Law Judge assigned to preside over the contested case proceeding and the Commissioner or Deputy Commissioner who signs the final order.¶
- (16) "Good cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. "Good cause" does not include a lack of knowledge of the law, including these rules.¶
- (17) "Issuance" means the act of sending out a document from the Forum. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the Forum.¶
- (18) "Mail" means the act of sending, or an item sent, by a method or manner that results in a postmark on the item or proof of service of registered or certified mail.¶
- (19) "Participant" means any party, including any person, aggrieved person intervening in a proceeding involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, or entity granted party status under OAR 137-003-0005, or the Agency.¶
- (20) "Party" means:¶
- (a) Any person, government agency, or entity upon whom a charging document has been served;¶
- (b) Any person, government agency, or entity that has been granted party or limited party status under OAR 137-003-0005;¶
- (c) Any aggrieved person intervening in a proceeding involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.¶
- (21) "Postmark" means, for purposes of these rules:¶
- (a) An imprint in black ink on the address side of the mail piece that shows the location of the United States Postal

Service office that accepted custody of the mail, along with the state, zip code, and date of mailing, or ¶  
(b) A stamp indicating when postage was paid, when accompanied by a fully executed certificate of service indicating the document was mailed on the date postage was paid. ¶

(22) "Service" means, for purposes of these rules, the method of sending documents and includes personal service, hand delivery, email, or registered, certified mail, or regular mail sent through the United States Postal Service.

Statutory/Other Authority: ORS chapter 183, ORS 651.060, ORS 653.065, ORS 658.407, ORS 658.820, ORS 659A.805

Statutes/Other Implemented: ORS 279C.860, ORS 279C.865, ORS 652.332, ORS 653.065, ORS 658.115, ORS 658.407, ORS 658.820, ORS chapter 659A

AMEND: 839-050-0030

RULE SUMMARY: Amends rule to authorize email service in contested case proceeding conducted by the Bureau.

CHANGES TO RULE:

839-050-0030

Service of Documents ¶

(1) Except as otherwise provided in ORS 652.332(1), the charging document will be served on the party or the party's representative by personal service or by United States Postal Service registered or certified mail. Service of a charging document is complete upon the earlier of:¶

(a) Receipt by the party or the party's representative; or¶

(b) Mailing when sent by United States Postal Service registered or certified mail to the correct address of the party or the party's representative.¶

(2) All other documents may be served on the party or the party's representative by ~~¶~~

(a) Personal service or by; ¶

(b) United States Postal Service mail to the last known address in the Agency's file for the subject case; or¶

(c) Email to a person who has consented to email service in writing, at an email address identified by the person.¶

(3) Service of a document other than the charging document is complete upon personal service ~~or~~, official United States Postal Service postmark date, or email service when a person has consented to email service, whichever occurs earlier.¶

~~(34)~~ Any participant to a contested case proceeding filing a document with the Forum will serve a copy of such document upon all other participants or their representatives.¶

~~(45)~~ A participant whose mailing or email address changes must notify the Contested Case Coordinator in writing within 10 days of such change with a copy to all other participants; otherwise, the Contested Case Coordinator, the Forum, and the Agency will presume the address on file to be correct.¶

~~(56)~~ For the purpose of this rule, the term "participant" or "party" does not include an aggrieved person intervening in a proceeding involving a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, or an aggrieved person named in a commissioner's complaint:

Statutory/Other Authority: ORS chapter 183, ORS 651.060~~(4)~~

Statutes/Other Implemented: ORS 279C.860, ORS 279C.865, ORS 652.332~~(3)~~, ORS 653.065~~(1)~~, ORS 658.115, ORS 658.407~~(3)~~, ORS 658.820, ORS 659A.845, ORS 659A.850, ORS 659A.885