

OFFICE OF THE SECRETARY OF STATE

BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 170
OREGON STATE TREASURY

FILED

03/09/2020 12:39 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Extending employer registration dates and outline recertification process

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/21/2020 1:00 AM

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.

CONTACT: David Bell
503-431-7929
david.bell@ost.state.or.us

350 Winter St NE, Suite 100
Salem, OR 97301

Filed By:
Kevin Willingham
Rules Coordinator

NEED FOR THE RULE(S):

To allow adequate time for employers to comply with registration and recertification requirements.

The rule established a deadline that was impossible for employers to meet, and would thereby create harm to the subject employers. The temporary rule extending the deadline will eliminate the potential harm to employers, and the proposed rule makes the extension permanent.

The rule directed the OregonSaves staff and partners to establish a registration deadline for Client Employers as November 15, 2019. Through our work with Client Employers and their associations over the past months we have discovered that this deadline was not possible. Due to a lack of information captured by the State of Oregon, we must rely on company information provided by Client Employer associations. Gathering this information from all relevant associations, properly communicating with Client Employers and facilitating this registration cannot happen by the November 15, 2019 deadline. The amended rule continues the temporary extension to to May 15, 2020 where we can properly register these Employers and Employees.

The rule directed the OregonSaves staff and partners to establish a registration deadline for Employers with four or fewer Employees as May 15, 2020. We discovered that this deadline is not possible due to the sheer number of employers in this category and the fact that we need to move the Client Employer deadline back to this same date. The temporary rule extended this deadline to January 15, 2021 and is made permanent with this proposed amendment. The program can properly register these Employers and Employees.

The rule directed the OregonSaves staff, partners and Oregon Retirement Savings Board to establish a process for Employers to recertify.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

FISCAL AND ECONOMIC IMPACT:

The extension of the registration process does not add an additional requirement, but extends it to a later date. As a result, the extension does not have a fiscal and economic impact. The recertification amendment eliminates the requirement to recertify every three years. As a result, the amendment should have a nominal savings to business.

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).

The extension of the registration process and the elimination of the recertification amendment will not economically affect businesses. In fact, the extension of the registration process will allow our team the time to continue meetings with Small Businesses to ensure our procedures align with their systems. It is estimated that there are about 100,000 Small Businesses that fall into the last wave that is being extended. There is no increased administrative activity and no expected cost of services.

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

Small Businesses were intricately involved in drafting the original OregonSaves rules and in the development of the program overall. Through feedback from the Small Business community, we decided it would be best for them and the program to extend the registration process of their wave.

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

The Oregon Retirement Savings Board discussed the rule amendments during a public meeting and provided the opportunity for public input.

RULES PROPOSED:

170-080-0015, 170-080-0020

AMEND: 170-080-0015

RULE SUMMARY: Amended to adjust the registration deadline for Client Employers from November 15, 2019 to May 15, 2020 and adjust the registration deadline for an employer with 4 or fewer employees from May 15, 2020 to January 15, 2021.

CHANGES TO RULE:

170-080-0015

Employer Registration and Employee Enrollment ¶¶

(1) Registration¶¶

(a) Except as provided in subsection (e), each Employer shall register with the Program or file a Certificate of

Exemption on or before the Registration Date. ¶

(b) Unless otherwise permitted by the Program Administrator, the Registration Date for an Employer shall be as follows:¶

(A) An Employer employing one hundred (100) or more Employees: November 15, 2017¶

(B) An Employer employing at least fifty (50) but no more than ninety-nine (99) Employees: May 15, 2018¶

(C) An Employer employing at least twenty (20) but no more than forty-nine (49) Employees: December 15, 2018¶

(D) An Employer employing at least ten (10) but no more than nineteen (19) Employees: May 15, 2019¶

(E) An Employer employing at least five (5) but no more than nine (9) Employees: November 15, 2019¶

(F) Client Employers, as defined in 170-080-0010: ~~November~~ May 15, 2019 ~~20~~ ¶

(G) An Employer employing four (4) or fewer Employees: ~~May~~ January 15, 2020 ~~1~~ ¶

(c) In determining the Number of Employees for the purposes of this section, Employers shall use data as submitted on the 2016 4th quarter Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, except under the following circumstances: ¶

(A) An Employer who first meets the definition of Employer after January 1, 2017 will use the number of employees submitted on the Employer's most recently filed Form OQ; ¶

(B) An Employer with no Employees reported on Form OQ will have a Registration Date of May 15, 2020; or¶

(C) At the Program Administrator's discretion, an Employer with a valid business reason may use data from a more recent Form OQ. ¶

(d) To register with the Program, a Facilitating Employer shall use the internet portal established by the Program Administrator to provide the following information: ¶

(A) Employer name and assumed business name, if any;¶

(B) Employer Identification Numbers (Federal Employer Identification Number and Business Identification Number);¶

(C) Employer mailing address;¶

(D) Name, title, telephone number and email address of an individual designated by the Employer as the Program's point of contact;¶

(E) Number of Employees; and¶

(F) Any other information reasonably required by the Program for the purposes of administering the Program.¶

(e) An Employer who received a notice of presumed exemption from the Program Administrator, as specified in OAR 170-080-0020, is not required to take any further action as long as it continues to offer a Qualified Plan to some or all of its Employees. ¶

(f) New Employers: the Registration Date for an Employer who first meets the definition of Employer after July 1, 2017, shall be the later of: ¶

(A) the date specified in subsection (1)(b) above, or ¶

(B) 90 days after the Employer first meets the definition of Employer.¶

(g) The Registration Date for an Exempt Employer that ceases to offer a Qualified Plan to some or all of its Employees shall be the later of:¶

(A) the date specified in subsection (1)(b) above, or¶

(B) 90 days after the Exempt Employer ceases to offer a Qualified Plan to some or all of its Employees.¶

(h) A Facilitating Employer who lacks access to the internet may register with the Program by alternate means established by the Program Administrator.¶

(2) Employee Enrollment through a Facilitating Employer¶

(a) On or before the Initial Enrollment Date, and on or before the Enrollment Date for each subsequently hired Employee, a Facilitating Employer shall enroll its Employees using the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator. The Facilitating Employer shall provide the following information for each Employee no more than 30 days after the Registration Date (for Employees hired on or before the Registration Date) and no more than 30 days following the start of Employment (for Employees hired after the Registration Date): ¶

(A) Full legal name;¶

(B) Social security number or taxpayer ID number;¶

(C) Date of birth;¶

(D) Mailing address; ¶

(E) Employee's designated email address; and¶

(F) Any other information reasonably required by the Program for the purposes of administering the Program.¶

(b) In order to allow for Employees to establish an IRA through an automatic enrollment process, the Board shall establish procedures with the Program Administrator for the execution or adoption of such documents as are necessary or appropriate to establish an IRA for such Employee. If the Employee has not opted out after notice of the opportunity to opt out was sent to the Employee using the contact information on file with the Program, and the opt-out period has lapsed, then an IRA will be established for such Employee pursuant to directives and procedures established by the Board.¶

(c) Automatic Employee enrollment occurs 30 days after the Facilitating Employer provides the information in OAR 170-080-0015(2)(a), unless the Employee and Facilitating Employer agree to an earlier date.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0020

RULE SUMMARY: Amended to outline the process of recertification in section (2).

CHANGES TO RULE:

170-080-0020

Employer Exemptions ¶¶

(1) An authorized representative of an Employer may file a Certificate of Exemption with the Program by certifying, through the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator, that the Employer offers a Qualified Plan to some or all of its Employees.

¶¶

(2) A Certificate of Exemption is valid ~~for three (3) years from the date~~ so long as the Employer files the Certificate with the Program Administrator, so long as continues to offer a Qualified Plan to some or all of its Employees. If the Employer continues to offer a Qualified Plan to some or all of its Employees. A Certificate of Exemption may be renewed by following a process of recertification to be established by the Board not later than December 31, 2, it is required to notify the Program Administrator and register with the Program on or before the Registration Date, as listed in this OAR 170-080-00195. ¶¶

(3) The Program Administrator shall, from time to time, compare Form 5500 (Annual Return/Report of Employee Benefit Plan) filings with the database of Employers and Exempt Employers. ¶¶

(a) For an Employer identified as offering a Qualified Plan to some or all of its Employees, or an Exempt Employer identified as continuing to offer a Qualified Plan to some or all of its Employees, the Program Administrator may send written notice of presumed exemption from the Program. ¶¶

(b) If the Program Administrator determines that the Employer or Exempt Employer no longer offers a Qualified Plan to some or all of its Employees, or is not identified as having a current Form 5500 on file with the U.S. Department of Labor, the Program Administrator may send written notice directing the Employer or Exempt Employer to either file a Certificate of Exemption or register with the Program. ¶¶

(4) The exemption of an Exempt Employer that received a notice of presumed exemption is valid so long as the Exempt Employer continues to offer a Qualified Plan to some or all of its Employees. If the Exempt Employer ceases to offer a Qualified Plan to some or all of its Employees, it is required to notify the Program Administrator and register with the Program on or before the Registration Date, as listed in this OAR 170-080-0015.

Statutory/Other Authority: ORS 178.200 ~~to~~ 178.245

Statutes/Other Implemented: ORS 178.200-178.245