

Memo

NOTICE OF PERMANENT RULEMAKING HEARING

DATE: September 27, 2019

TO: Legislators and Interested Parties

FROM: Erin Seiler, Senior Policy Advisor

RE: Permanent Rulemaking amending:

OAR 839-001-0520 Amount of Claim to be Paid from the Wage Security Fund

RULE CAPTION:

Amends Wage Security Fund rules to implement OL CH. 444 (2019)

Not more than 15 words that reasonably identify the subject matter of the agency's intended action.

NOTICE: On September 26, 2019, the Oregon Bureau of Labor and Industries filed a Notice of Proposed Permanent Rulemaking Hearing, with the Oregon Secretary of State, to amend the above referenced administrative rule regarding the amount of claim to be paid from the Wage Security Fund (WSF).

The WSF was established by the Oregon Legislature in 1985 and is administered by the Bureau of Labor and Industries. The WSF protects Oregon workers from wage loss by paying the final wages of employees when a plant or company closes without sufficient funds to pay final wages.

The labor commissioner may pursue employers for reimbursement of amounts paid from the WSF, in addition to penalties, where appropriate. Workers can qualify for payments of the amount they earned during the 60 days preceding the closure date of the firm or the amount of unpaid wages earned within 60 days of the last day of employment. A maximum of \$4,000 may be paid to an individual worker.

In 2019, the Oregon Legislature passed House Bill 3193 raising the cap on amount that a wage claimant can receive from the WSF from \$4,000 to \$10,000. This change becomes effective January 1, 2020. Since Bureau of Labor and Industries administrative rules regarding the amount that a wage claimant can receive from the WSF aligns with the statute, it is necessary to amend the Bureau of Labor and Industries rule to reflect the statutory change. There are no other rule changes to the administration or governance of the WSF.

A public hearing is scheduled for 9:00 a.m. on October 17, 2019 at the Oregon Bureau of Labor and Industries, 800 NE Oregon St. #1045, Portland, OR, 97232.

The deadline for public comment on the proposed rules is 5:00 p.m. on October 21, 2019. Members of the public are welcome to submit comments by mail or email prior to this deadline.

ATTACHMENTS: Attached are the Notice of Proposed Rulemaking Hearing, the Statement of Need and Fiscal Impact, and a copy of the rules showing the proposed amendments.

COMMENTS: Comments may be emailed to Erin Seiler at erin.seiler@state.or.us or mailed to Erin Seiler c/o BOLI, 800 NE Oregon St. #1045, Portland OR 97232.

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
INTERIM DIRECTOR

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

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILED
09/26/2019 9:42 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amends Wage Security Fund rules to implement OL CH. 444 (2019)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2019 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.

CONTACT: Erin Seiler
503-382-7934
erin.seiler@state.or.us

800 NE Oregon #1045
Portland, OR 97232

Filed By:
Erin Seiler
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/17/2019

TIME: 9:00 AM - 10:00 AM

OFFICER: staff

ADDRESS: Bureau of Labor and
Industries

800 NE Oregon St. #1045
Portland, OR 97232

NEED FOR THE RULE(S):

The Oregon Bureau of Labor and Industries filed a Notice of Proposed Permanent Rulemaking Hearing, with the Oregon Secretary of State, to amend the above referenced administrative rule regarding the amount of claim to be paid from the Wage Security Fund (WSF).

The WSF was established by the Oregon Legislature in 1985 and is administered by the Bureau of Labor and Industries. The WSF protects Oregon workers from wage loss by paying the final wages of employees when a plant or company closes without sufficient funds to pay final wages.

The labor commissioner may pursue employers for reimbursement of amounts paid from the WSF, in addition to penalties, where appropriate. Workers can qualify for payments of the amount they earned during the 60 days preceding the closure date of the firm or the amount of unpaid wages earned within 60 days of the last day of employment. A maximum of \$4,000 may be paid to an individual worker.

In 2019, the Oregon Legislature passed House Bill 3193 raising the cap on amount that a wage claimant can receive

from the WSF from \$4,000 to \$10,000. This change becomes effective January 1, 2020. Since Bureau of Labor and Industries administrative rules regarding the amount that a wage claimant can receive from the WSF align with the statute, it is necessary to amend the Bureau of Labor and Industries rule to reflect the statutory change. There are no other rule changes to the administration or governance of the WSF.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Enrolled House Bill 3193, 2019, available at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3193>.

FISCAL AND ECONOMIC IMPACT:

No economic or fiscal 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).

(1) No economic or fiscal impact upon state agencies or local governments.

The Bureau of Labor and Industries does not anticipate that amending this rule will result in an economic or fiscal impact upon businesses.

The Bureau of Labor and Industries does not expect this rule to have a direct fiscal or economic impact on members of the general public.

(2)(a) All employers in Oregon who are subject to Oregon U.I. tax are subject to paying into the WSF.

(b) None. The proposed amendment imposes no additional requirement on Oregon employers.

(c) None. The proposed amendment imposes no additional requirement on Oregon employers.

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

No small businesses were involved in the development of the proposed amendment to this rule.

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

An Advisory Committee was not appointed for the drafting of this rule because the amendment only reflects the statutory change made in HB 3193 (2019).

AMEND: 839-001-0520

RULE SUMMARY: Implements changes made by OL CH. 444 (2019): Increases the amount of wages that may be paid out of the Wage Security Fund from \$4,000 to \$10,000.

CHANGES TO RULE:

839-001-0520

Amount of Claim to Be Paid from the Wage Security Fund ¶¶

(1) Except as provided in sections (2) and (3) of this rule, after a wage claim is determined to be eligible for payment from the Fund, the amount to be paid shall be:¶¶

- (a) The unpaid amount of wages earned within 60 days before the date of the cessation of business; or¶¶
- (b) If the claimant filed a wage claim before the cessation of business, the unpaid amount of wages earned within 60 days before the last day the claimant was employed.¶¶
- (2) The commissioner shall pay the amount of wages earned as provided in section (1) only to the extent of \$410,000.¶¶
- (3) When the amount of a valid wage claim determined to be eligible for payment is greater than the amount available in the Fund for paying such claims, payments on wage claims shall be prorated in accordance with OAR 839-001-0530.

Statutory/Other Authority: ORS 651.060(4), 652

Statutes/Other Implemented: ORS 652.414, OLCH. 444