



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

CHAPTER 839

**BUREAU OF LABOR AND INDUSTRIES**

**FILED**

09/04/2025 8:30 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Updates rule relating to expression of milk in the workplace.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2025 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 rules are necessary because ORS 653.077 requires the Bureau to adopt rules that implement and enforce the statutory section. A statutory amendment in chapter 24, Oregon Laws 2025, expanded the class of employees subject to ORS 653.077 and these rule amendments are necessary to incorporate the change and prevent confusion about the scope of the law. These rule amendments also reduce duplication with state statute, update a statutory citation and improve readability.

In addition, these rule amendments are necessary to eliminate the ability to modify the application of these rules by agreement. The legislative policy adopted in ORS 653.077 establishes minimum requirements. Employers and employees may, by agreement, provide for more or better protections. These rule amendments are necessary to ensure that ORS 653.077 is a legal minimum that may not be reduced by agreement.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE**

Chapter 24, Oregon Laws 2025 is available here:  
<https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2541>.

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

These rule amendments largely maintain the statutory status quo and, as such, will not affect racial equity in this state. To the extent the statute authorizes agreements that provide for fewer opportunities, or less protection, for expressing milk in the workplace, the impact on racial equity is likely to be neutral. Even if one assumes these agreements disproportionately impact specific racial groups, any reduction in expression-related rights would presumably have been bargained for in exchange for valuable consideration. While these rules may prohibit future agreements that reduce expression-related rights, the Bureau does not anticipate a racial impact.

## FISCAL AND ECONOMIC IMPACT:

As indicated above, these rule amendments largely maintain the statutory status quo. Any fiscal or economic impact would only be experienced by an employer who has entered into a legally enforceable collective bargaining agreement with their employees that provides fewer opportunities or less protections for the expression of milk and who cannot avail themselves of the undue hardship exemption. For these employers, these rule amendments will have the fiscal and economic impact that is imposed by ORS 653.077.

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## 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).*

ORS 653.077 and these rules apply to most employers in this State, including state agencies, units of local governments and private employers, and to their employees. Employers with 10 or fewer employees are not required to provide rest periods if to do so would create an undue hardship.

According to the 2024 Small Business Profile compiled by the United States Small Business Administration, Oregon has nearly 400,000 small businesses across a wide array of industries, approximately 90,000 of which have between 1 and 19 employees. Nearly all of these 90,000 businesses have 10 or fewer employees. Therefore, they are required to comply with ORS 653.077 and these rules or demonstrate that to do so imposes an undue hardship.

To the extent these rule amendments impose reporting, recordkeeping or administrative activities or costs, they do so only to the extent required by statute and only on any employers who have entered into a legally enforceable collective bargaining agreement with their employees that provides fewer opportunities or less protections for the expression of milk in the workplace. Similarly, any costs of professional services, equipment supplies, labor and increased administration is exclusively a function of the statutory requirements.

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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 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.

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

Given the scope of these changes and the available resources, the Bureau believes that any issues related to these rule amendments are likely to be efficiently surfaced via this public rulemaking notice and request for public comment.

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AMEND: 839-020-0051

RULE SUMMARY: Amends rule relating to obligation of employers to provide rest period for employees to express milk.

## CHANGES TO RULE:

839-020-0051

Rest Periods for Expression of Milk ¶¶

(1) ORS 653.077 requires employers to provide reasonable rest periods to accommodate an employee who needs to express milk for the employee's child 18 months of age or younger.¶¶

(a) If feasible, the employee will take the rest periods to express milk at the same time as the rest periods or meal

periods that are otherwise provided to the employee. If not feasible, the employee is entitled to take an unpaid rest period each time the employee has a need to express milk.¶

(b) If the employer is required by law or contract to provide the employee with paid rest periods, the employer will treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods.¶

(c) If an employee takes unpaid rest periods, the employer may, but is not required to, allow the employee to work before or after the employee's normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time.¶

(d) An employer may not require an employee, including an employee who is FLSA exempt, to substitute paid leave time for unpaid rest periods provided in compliance with these rules.¶

(e) As used in ORS 653.077 and this rule, "expression of milk" means the initiation of lactation by manual or mechanical means and does not include breastfeeding. However, any employer may accommodate breastfeeding pursuant to its own policies or by agreement or contract with employees.¶

(2) An employer will make a reasonable effort to provide the employee with a private location within close proximity to the employee's work area to express milk.¶

(a) As used in ORS 653.077 and this rule, a "private location" is a place, other than a ~~public restroom or toilet stall~~toilet stall or public restroom, in close proximity to the employee's work area for the employee to express milk concealed from view and without intrusion by other employees or the public and includes, but is not limited to:¶

(A) The employee's work area if the work area permits the employee to express milk concealed from view and without intrusion by other employees or the public.¶

(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk concealed from view and without intrusion by other employees or the public.¶

(C) A child care facility where the employee can express milk concealed from view and without intrusion by other employees or the public.¶

(D) An empty or unused office, conference room, or a storage space, so long as there is a door that closes and any windows can be covered, and there is a sign that can be placed on the door or handle of the door indicating that the room is in use.¶

(b) As used in ORS 653.077 and this rule, a "public restroom" is a restroom freely available for use by employees or the general public that does not include an attached lounge or room that allows an employee to express milk concealed from view and without intrusion by other employees or the public. A "toilet stall" includes a restroom that contains one toilet, whether or not in plain view, and whether or not the restroom locks from the inside.¶

(c) As used in ORS 653.077 and this rule, "close proximity" means within walking distance from the employee's work area that does not appreciably shorten the rest or meal period.¶

(d) If a private location is not within close proximity to the employee's work area, the employer may not include the time taken to travel to and from the location as part of the break period.¶

(3) An employer with ten (10) or fewer employees is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business. As defined in ORS 653.077, "undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business. For the purpose of determining whether providing rest periods for expression of milk requires significant difficulty or expense, the following factors will be considered:¶

(a) The nature and the cost of complying with the requirement to provide a reasonable rest period for the expression of milk.¶

(b) The overall financial resources of the employer's facility or facilities involved in complying with the requirement to provide a reasonable rest period for the expression of milk, the number of persons employed at the facility and the effect on expenses and resources or other effects on the operation of the facility caused by the necessity for compliance with the requirement to provide a reasonable rest period in a private location.¶

(c) The overall financial resources of the employer, the overall size of the employer's business with respect to the number of its employees and the number, type and location of the employer's facilities.¶

(d) The type of operations conducted by the employer, including the composition, structure and functions of the workforce of the employer and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.¶

(4) An employer is required provide a reasonable accommodation to an employee's or applicant's limitations related to the expression of milk in accordance with ~~OLCH. 139, 2019~~ORS 659A.146 to ORS 659A.148.¶

(5) When possible, an employee who intends to express milk during work hours must give the employer reasonable oral or written notice of the employee's intention to allow the employer time to make the preparations necessary for compliance with ORS 653.077 and these rules. Failure to give notice is not grounds for discipline.¶

(6) An employer must notify all employees, through its policies or other means, of the person or entity to whom an employee should give notice of intent to express milk. If the employer does not provide such notification, the

employee's oral or written notice to a supervisor, manager, or human resource or personnel department or their staff will be presumed sufficient.¶

(7) After receiving notice from the employee, the employer may take a reasonable time to make necessary preparations for compliance with ORS 653.077 and this rule. A "reasonable time" must not interfere with the rights provided by 653.077 and this rule, taking into consideration the immediacy of the employee's need to express milk, and that the rights under 653.077 and this rule apply only until the employee's child is 18 months of age. For example, an employer in the process of creating a private location for expressing milk must provide the most adequate space already available for an employee who gives notice of an immediate need.¶

(8) An employee invoking the provisions of ORS 653.077 and this rule is responsible for storing the employee's expressed milk. The employer must allow the employee to bring a cooler or other insulated food container to work for storing the expressed milk and ensure there is adequate space in the workplace to accommodate the employee's cooler or insulated food container. If the employer allows employees access to refrigeration for personal use, the employer may allow, but cannot require, an employee who expresses milk during work hours to use the available refrigeration to store the expressed milk.¶

~~(9) ORS 653.077 and this rule apply to individuals engaged in administrative, executive or professional work as described in ORS 653.020(3).¶~~

~~(10) The provisions of this rule may be modified by the terms of a collective bargaining agreement if the collective bargaining agreement entered into by the employee includes provisions that prescribe rules pertaining to reasonable rest periods for the expression of milk.¶~~

~~(11) Each school district board must adopt a policy to accommodate an employee who needs to express milk for the employee's child.¶~~

~~(12) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.¶~~

~~(13) The commissioner of the Bureau of Labor and Industries will appoint an advisory committee to facilitate compliance with ORS 653.077 and these rules. Upon request by a particular industry or profession, the advisory committee will determine when the ordinary course of such industry or profession makes compliance difficult for an employer in that industry or profession, and submit to the commissioner recommendations for rules to address compliance difficulties in that industry or profession.~~

Statutory/Other Authority: ORS 653.077~~(14)~~

Statutes/Other Implemented: ORS 653.077, ~~OL CH. 118, 2019~~RS 659A.146 - 659A.148