

OFFICE OF THE SECRETARY OF STATE

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AND TRIBAL LIAISON



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 115  
EMPLOYMENT RELATIONS BOARD

**FILED**

10/30/2023 4:01 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amend Division 25 to provide for electronic record/signatures in authorizations and Repeal Division 30

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/28/2023 10:00 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.*

CONTACT: April Bathurst  
503-378-3807  
April.Bathurst@ERB.oregon.gov

1225 Ferry St. S.E.  
Salem, OR 97301

Filed By:  
April Bathurst  
Rules Coordinator

HEARING(S)

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

DATE: 11/28/2023

TIME: 10:00 AM - 11:00 AM

OFFICER: Adam Rhynard

HEARING LOCATION

ADDRESS: 1225 Ferry St. S.E., Salem, OR 97301

REMOTE MEETING DETAILS

PHONE NUMBER: 503-378-3807

SPECIAL INSTRUCTIONS:

held via Microsoft Teams

NEED FOR THE RULE(S)

The amendment to Division 25 is needed to comply with HB 2573 (2023), which directs this agency to develop procedures that may be used for preparing and signing authorizations designating bargaining representatives using an electronic record and an electronic signature. The repeal of Division 30 is needed because the deauthorization of fair share agreements in the public sector is no longer valid after the U.S. Supreme Court decision in Janus v. AFSCME.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The agency relied on HB 2573, its legislative history, a recording of a July 31, 2023, meeting of the agency's standing Rules Advisory Committee, and a written submission of the Oregon AFL-CIO, dated August 22, 2023. The three-member Board also conducted a public hearing on August 29, 2023, during which it promulgated temporary rules, and on October 23, 2023. Recordings of the Rules Advisory Committee and the public hearings, as well as all other documents, are available for inspection and listening on request and by appointment Monday through Friday, 8:00 a.m.

to 5:00 p.m., at the Employment Relations Board, 1225 Ferry St. S.E. Salem, Oregon, 97301.

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

The agency is not aware of how adoption of the rules will affect racial equity in this state.

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FISCAL AND ECONOMIC IMPACT:

There is no anticipated fiscal or economic impact by adopting the rule.

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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).*

No entity should be economically affected by the rule and no small business are subject to the rule. The agency does not anticipate any additional reporting, recordkeeping, administrative activities or costs to comply with the rule. The agency also does not anticipate any additional costs of professional services, equipment supplies, labor and increased administration required to comply with the rules.

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

The rule does not affect small businesses. The agency did use its Rules Advisory Committee in developing the rules.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

115-025-0021, 115-030-0000

AMEND: 115-025-0021

RULE SUMMARY: Adopt rule amendments.

CHANGES TO RULE:

**115-025-0021**

**Showing of Interest Requirements**

- (1) Many petitions must be supported by a valid showing of interest.¶
- (2) A petitioner can fulfill the showing of interest requirement by submitting authorization documents (typically cards) signed by eligible employees. An authorization document must, at a minimum, contain the following:¶
  - (a) The employee's name, typed or legibly printed;¶
  - (b) The employee's signature;¶
  - (c) The date of the employee's signature;¶
  - (d) A statement that the employee designates the named labor organization as the employee's exclusive representative for purposes of collective bargaining with the employee's employer (if applicable); and¶
  - (e) A statement that the employee understands how the authorization document may be used. The statement must be consistent with the type of petition being filed. Model language for card check petitions is provided below, in section (4) of this rule.¶
- (3) An authorization document must be signed and dated within the 180-day period before the petition is filed.¶
- (4)(a) The Board has developed the following model language that may be used for the showing of interest for a card check petition (to certify a new bargaining unit or to add unrepresented employees to an existing unit):¶

I designate [name of labor organization] as the exclusive bargaining representative for the purposes of collective bargaining with [name of employer]. I understand that my signature may be used to obtain certification of the above-named labor organization as the exclusive bargaining representative, without an election.¶

[Employee Name] [Employee Signature] [Date Signed]¶¶

(b) The authorization document may use different language than subsection (4)(a) of this rule, but the document must include the same information for the authorization to be valid.¶¶

(5)(a) When authorization cards are used for the showing of interest, the petitioner should arrange the cards alphabetically by last name. Authorizations that do not substantially comply with this rule will not be counted. ¶¶

~~(b) The Board will accept electronic copies of showings of interest with a petition as sufficient to initiate the Board's processes, but petitioners must provide or~~ An electronic record and an electronic signature, as those terms are defined in ORS 84.004, may be used to prepare and sign authorizations.¶¶

(c) Notwithstanding section (2) of this rule, and except as otherwise provided in subsection (d) of this section, a petition submitted under this Division as an electronic record that includes a signed authorization using an electronic signature must:¶¶

(A) Include the following information:¶¶

(i) The name of the signer;¶¶

(ii) The signer's email address or social media account;¶¶

(iii) The signer's telephone number;¶¶

(iv) The exact language that the signer is assenting to by providing the electronic signature;¶¶

(v) The date of submission of the electronic signature; and ¶¶

(vi) The name of the public employer that employs the signer; and¶¶

(B) Be accompanied by a verification declaration by the petitioning party:¶¶

(i) Specifying the technology used to obtain and verify the signatures;¶¶

(ii) Providing the methods used to ensure the authenticity of the signature; and¶¶

(iii) Confirming that the information transmitted to the signer was the same information to which the signer assented.¶¶

(d) If the technology used to provide the signed authorization does not support digital docuSignatures that are suited to satisfy the requirements of the Board within ten (10) days of the filing of the petition verification declaration described in subsection (c) of this section, the petitioning party must submit evidence that, after the petitioning party obtained an electronic signature, the party promptly transmitted a confirmation transmission to the signer confirming that all of the information described under subparagraphs (c)(A)(i) to (vi) of this section is true.¶¶

(6)(a) The showing of interest submitted under these rules will not be furnished to any of the parties except the party that filed the showing of interest, which may examine cards or petitions when signatures are deemed invalid.¶¶

(b) The showing of interest will be destroyed when the file is closed unless the party filing the showing of interest requests that its showing of interest be returned. The Board will return the original showing of interest to a petitioner upon request if the petition is withdrawn.

Statutory/Other Authority: ORS 240.086(3), 243.766(7)

Statutes/Other Implemented: ORS 240

REPEAL: 115-030-0000

RULE SUMMARY: Repeal OAR 115-030-0000

CHANGES TO RULE:

~~115-030-0000~~

~~Deauthorization~~

~~[Reserved]~~

~~Statutory/Other Authority: ORS 240.086(3), 243.766(7)~~

~~Statutes/Other Implemented: ORS 243~~