

## NOTICE OF PROPOSED RULEMAKING

### CHAPTER 115

### EMPLOYMENT RELATIONS BOARD

FILING CAPTION: Amend rules to limit hearing recordings, allow reconsideration response, and modify attorney fees for appeals.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/21/2025 11:00 AM

#### HEARING(S):

DATE: 05/21/2025

TIME: 10:00 AM - 10:30 AM

OFFICER: Adam Rhynard

#### IN-PERSON HEARING DETAILS

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

#### REMOTE HEARING DETAILS

##### MEETING URL:

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZTM4MDBlM2YtOTQ3YS00NzBkLTk4MzQtM2NkYTE2OWY1YmI4%40thread.v2/0?context=%7b%22Tid%22%3a%22aa3f6932-fa7c-47b4-a0ce-a598cad161cf%22%2c%22Oid%22%3a%223d9d8073-267f-4d71-b626-6f61dd0ab1f1%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTM4MDBlM2YtOTQ3YS00NzBkLTk4MzQtM2NkYTE2OWY1YmI4%40thread.v2/0?context=%7b%22Tid%22%3a%22aa3f6932-fa7c-47b4-a0ce-a598cad161cf%22%2c%22Oid%22%3a%223d9d8073-267f-4d71-b626-6f61dd0ab1f1%22%7d)

PHONE NUMBER: 503-378-3807

##### SPECIAL INSTRUCTIONS:

Meeting ID: 297 070 920 498 0

Passcode: 2ua7Pm7o

#### NEED FOR THE RULE(S):

These rule amendments are needed to reflect constituent recommendations on best practices in proceedings before the agency.

#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Rules Advisory Committee report on recommended changes and those meetings were recorded and are available for download via the Employment Relations Board website.

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

None

#### FISCAL AND ECONOMIC IMPACT:

None

#### 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).

None

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

None

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

CONTACT:

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1225 Ferry St. S.E.

Salem,OR 97301

RULES PROPOSED:

115-010-0075, 115-010-0100, 115-035-0057

AMEND: 115-010-0075

RULE TITLE: Conduct at Hearing

RULE SUMMARY: These rule amendments are needed to clarify hearing decorum.

RULE TEXT:

(1) All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner.

(2) The Board or Board Agent shall record the proceeding. No other recording or transmission of any portion of the proceeding shall be permitted, except that, upon request by a party's representative and notice at the hearing, the Board will permit parties to the proceeding to audio record the proceeding or portions thereof.

(3) Failure to comply with the Board or Board Agent's effort to retain order and decorum or to comply with this rule is grounds for removal from the hearing.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 240, 243

AMEND: 115-010-0100

RULE TITLE: Petitions for Reconsideration or Rehearing

RULE SUMMARY: The rule amendments add clarification for parties regarding reconsideration and rehearing.

RULE TEXT:

(1) A party has 14 days from the date of service of a Final Order to petition for reconsideration or rehearing. Any petition for reconsideration or rehearing must specifically state the ground(s) for the petition. A party has 7 days from the date of service of the petition for reconsideration or rehearing to file a response to the petition and/or to file a cross-petition for reconsideration or rehearing.

(2) Petition for Rehearing.

(a) A petition for rehearing asks the Board to return the matter to the ALJ for the purpose of submitting additional evidence.

(b) A petition for rehearing shall be granted only if the petitioner establishes that the petitioner would be unduly prejudiced if the petition was denied. If the basis for the petition is based on previously unavailable evidence, the petitioner must establish that the evidence could not reasonably have been discovered and produced at the hearing.

(3) Petition for Reconsideration.

(a) A petition for reconsideration asks the Board to reconsider a ruling, finding of fact, or conclusion of law in a Final Order.

(b) In a case where a Final Order is issued without a Recommended Order, the Board shall generally grant a party's request for reconsideration and grant oral argument.

(c) In a case where a Final Order is issued following a Recommended Order, a petition for reconsideration should be limited to:

(A) A claim of factual error;

(B) A claim that there has been a change in the statutes or case law since the issuance of the Final Order that affects the case; or

(C) A claim that the Board erred in construing or applying the law. A claim addressing legal and factual issues already argued and addressed in the Final Order is disfavored.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 240, 243

AMEND: 115-035-0057

RULE TITLE: Attorney Fees For Appeals

RULE SUMMARY: Amend Attorney Fees For Appeals

RULE TEXT:

Pursuant to ORS 243.676(2)(e), the Board will award attorney fees, if any, to the prevailing party on an appeal of a Board Order, in the amount of \$5,000. The Board may award an amount in excess of \$5,000 subject to all of the following:

- (1) An award of attorney fees on appeal shall not exceed \$5,000, unless a civil penalty is awarded in the Board proceeding and not reversed by the court.
- (2) Petitions for attorney fees must be filed with the Board within 21 days of the date of the appellate judgment. The petition shall include a statement of the amount of the costs requested, along with a description of the actual amount of the fees incurred by the petitioner or, where no fees were charged, the basis for the greater amount of costs requested.
- (3) Any objection to the petition shall be filed within 14 days of the date of service of the petition. A party objecting to costs based on excessive time spent must submit a supporting statement describing the amount of time spent on the case by the objecting party. A party objecting to costs based on an excessive hourly rate must submit a supporting statement identifying the hourly rate and total costs incurred by the objecting party.
- (4) The prevailing party is the party designated as such in the appellate judgment issued by the Court of Appeals or the Supreme Court following the ultimate appellate decision regarding a particular case.

STATUTORY/OTHER AUTHORITY: ORS 240.086(3), 243.766(7)

STATUTES/OTHER IMPLEMENTED: ORS 243

**115-010-0075**

**Conduct at Hearing**

(1) All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner.

(2) The Board or Board Agent shall record the proceeding. No other recording or transmission of any portion of the proceeding shall be permitted, except that, upon request by a party's representative and notice at the hearing, the Board will permit parties to the proceeding to audio record the proceeding or portions thereof.

(3) Failure to comply with the Board or Board Agent's effort to retain order and decorum or to comply with this rule is grounds for removal from the hearing.

## 115-010-0100

### Petitions for Reconsideration or Rehearing

(1) A party has 14 days from the date of service of a ~~Board order~~Final Order to petition for reconsideration or rehearing. Any petition for reconsideration or rehearing must specifically state the ground(s) for the petition. A party has 7 days from the date of service of the petition for reconsideration or rehearing to file a response to the petition and/or to file a cross-petition for reconsideration or rehearing.

(2) Petition for Rehearing.

(a) A petition for rehearing asks the Board to return the matter to the ALJ for the purpose of submitting additional evidence.

(b) A petition for rehearing shall be granted only if the petitioner establishes that the petitioner would be unduly prejudiced if the petition was denied. If the basis for the petition is based on previously unavailable evidence, the petitioner must establish that the evidence could not reasonably have been discovered and produced at the hearing.

(3) Petition for Reconsideration.

(a) A petition for reconsideration asks the Board to reconsider a ruling, finding of fact, or conclusion of law in a Final Order.

(b) In a case where a Final Order is issued without a Recommended Order, the Board shall generally grant a party's request for reconsideration and grant oral argument.

(c) In a case where a Final Order is issued following a Recommended Order, a petition for reconsideration should be limited to:

(A) A claim of factual error;

(B) A claim that there has been a change in the statutes or case law since the issuance of the Final Order that affects the case; or

(C) A claim that the Board erred in construing or applying the law. A claim addressing legal and factual issues already argued and addressed in the Final Order is disfavored.

Attorney Fees For Appeals

Pursuant to ORS 243.676(2)(e), the Board ~~shall will designate the amount of and~~ award attorney fees ~~if any,~~ to the prevailing party on an appeal of a Board Order, ~~in the amount of \$5,000. The Board may award an amount in excess of \$5,000~~ subject to all of the following:

(1) ~~An award of attorney fees on appeal shall not exceed \$5,000, unless a civil penalty is awarded in the Board proceeding and not reversed by the court.~~

(2) Petitions for attorney fees must be filed with the Board within 21 days of the date of the appellate judgment. The petition shall include a statement of the amount of the costs requested, along with a description of the actual amount of the fees incurred by the petitioner or, where no fees were charged, the basies for the greater amount of costs requested.

(23) Any objection to the petition shall be filed within 14 days of the date of service of the petition. A party objecting to costs based on excessive time spent must submit a supporting statement describing the amount of time spent on the case by the objecting party. A party objecting to costs based on an excessive hourly rate must submit a supporting statement identifying the hourly rate and total costs incurred by the objecting party.

(34) The prevailing party is the party designated as such in the appellate judgment issued by the Court of Appeals or the Supreme Court following the ultimate appellate decision regarding a particular case.

~~(4) An award of attorney fees on appeal shall not exceed \$5,000, unless a civil penalty is awarded in the Board proceeding and not reversed by the court.~~