



Oregon

Tina Kotek, Governor

Employment Relations Board

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EMPLOYMENT RELATIONS BOARD Public Meeting Notice

The Employment Relations Board will hold a public meeting to deliberate and potentially vote on whether to begin formal rulemaking (including the opportunity for public comment) on amendments to Division 10 of the agency's rules, as recommended by the agency's Rules Advisory Committee. The proposed recommendations are attached to this notice.

DATE AND TIME

MARCH 30, 2026

10:00 A.M. - 11:00 A.M.

LOCATION:

**1225 FERRY ST. S.E, SALEM, OREGON, EAST MT MAZAMA (RM #3).
INDIVIDUALS MAY ALSO VIEW AND PARTICIPATE BY
VIDEOCONFERENCE USING THE TEAMS PLATFORM.**

**To register to participate in this public meeting,
please email EmpRel.Board@ERB.oregon.gov and indicate whether you intend to participate
in person or by videoconference.**

This meeting is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to April Bathurst, 503-378-3807.

Filings and Service of Documents

(1)(a) Any document required or allowed to be filed with the Board or served on a party may be filed or served by mail, email, ~~facsimile (fax)~~, in person, or through the Board's online case management system. The Board shall post on its website the street address for personal delivery, the mailing address for filing by mail, ~~the telephone number for filing by fax~~, the email address to be used for email filing, and the website address for the online case management system.

(b) A complaint or answer will not be considered filed until the filing fees required by ORS 243.672(6) have been paid.

~~(c) The Board will charge \$25 for each facsimile filing.~~

~~(c)~~ If a physical document is filed at the Board's office (e.g., by mail or other delivery service) and received by the Board by 5:00 p.m. Pacific Time on a business day, then the document is considered ~~to be~~ filed on that business day. A physical document received after 5:00 p.m. Pacific Time is considered ~~to be~~ filed on the following next business day. If a document is filed by email, ~~fax~~, or the Board's online case management system, and the Board's record indicates that the Board received the document on or before 11:59 p.m. Pacific Time on a business day, then the document is considered ~~to be~~ filed on that business day. Midnight is considered the beginning of the following next day. A document filed by any means on a non-business day is considered ~~to be~~ filed on the following next business day.

~~(e) Fax filing is considered complete upon receipt of the entire fax transmission by Board. The time of receipt indicated by the Board's fax machine constitutes the time of receipt.~~

~~(d)~~ Filing by email or the online case management system is considered complete upon receipt of the entire electronic transmission by the Board. The Board's metadata created by the successful transmission of the email or the online case management system filing constitutes the time of receipt.

(2)(a) Unless otherwise stated in these rules or directed by the Board or Board Agent, the filing party must serve all documents filed with the Board on the named parties or a representative of record, and the filing party must include proof of service with the filing.

(b) If a party to a case is not using the Board's online case management system, the other parties shall serve documents on that party by any of the other means authorized by OAR 115-010-0033(1)(a).

(c) When the parties have a simultaneous filing deadline for a post-hearing brief or memorandum in aid of oral argument, the filing party is not responsible for serving the filing on the other parties. Instead, the Board will serve a copy of the post-hearing brief or memorandum in aid of oral argument on the other parties, after the filing deadline has passed. The Board or Board Agent may designate additional documents for filing and service under this provision.

115-010-0043

Remote Hearings by Electronic Devices

(1) The Board or Board Agent has the discretion to conduct a hearing or portion of a hearing ~~remotely, including by videoconference or telephone by an electronic device, such as telephone, video, and Internet devices.~~

~~(2) A party seeking to have a hearing or to offer evidence by an electronic device shall make the request at least ten days before the scheduled hearing date. Less notice may be allowed, if the Board or Board Agent determines that there is good cause for the late notice.~~

~~(23) Before making a determination whether to conduct a hearing in person or remotely, the Board or Board Agent will request the parties' preferences regarding the format of the hearing. In determining whether to grant a request that all or part of a hearing be conducted by an electronic device,~~ The Board or Board Agent shall also consider the circumstances of the particular case including:

- (a) The amount of notice given;
- (b) The availability of equipment;
- (c) The length of hearing;
- (d) The amount of documentary evidence to be utilized during the proposed testimony;
- (e) The number and location of witnesses;
- (f) The degree to which witness credibility is at issue;
- (g) The hardship on the parties or witnesses;
- (h) Any objections of an opposing party; and
- (i) The cost to the Board.

~~(34) The Board may conduct oral argument, under OAR 115-010-0095, or conduct other business remotely through hearings held by an electronic device.~~

115-010-0068

Prehearing Procedures

(1) The Board or Board Agent may convene prehearing conferences with the parties' representatives for the purpose of:

- (a) Scheduling hearing dates, witnesses for hearing and further prehearing conferences;
- (b) Disposing of pending motions;
- (c) Formulating and simplifying issues;
- (d) Discussing settlement of any or all of the issues;
- (e) Avoiding submission of unnecessary or cumulative exhibits or other evidence;
- (f) Stipulating to facts;
- (g) Discussing the need for any special hearing procedures;

(h) Discussing reasonable access to exhibits during the hearing including steps to ensure access for remote witnesses; and

(hi) Discussing any other matters that may assist in the disposition of the matter.

(2) At the discretion of the Board or Board Agent, the prehearing conference may be held by telephone or in person and may be recorded.

(3) Witness and Exhibit Lists:

(a) Each party shall provide a witness ~~list and exhibit~~ list to the other parties and to the Board or Board Agent. ~~Each party shall also provide an exhibit list and exhibits to any other party.~~

(b) These documents must be received no later than seven days before the scheduled hearing, unless the Board or ~~the~~ Board Agent directs otherwise.

(4) ~~(6)~~ Exhibits:

(a) A party intending to offer exhibits shall, where practicable, have them marked for identification. A party offering exhibits shall provide electronic copies to any ~~other~~ opposing party and the Board or Board Agent by seven days before the hearing, unless another date is set by the Board or Board Agent. ~~The Board or Board Agent may direct the parties regarding the formatting of exhibits.~~ A failure to comply with this subparagraph shall result in the exhibit not being admitted, unless good cause is shown.

(b) A party offering exhibits in a remote hearing is not required to provide paper copies of exhibits unless directed by the Board or Board Agent. A party offering exhibits in an in-person hearing shall provide ~~a paper copy~~s to any ~~other~~ opposing party and to the witness before seeking

its admission into evidence and shall provide a paper copy to the Board or Board Agent if directed by the Board or Board Agent.

(c) Nothing in this rule shall operate to exclude offering rebuttal evidence, to which any other party may object. Admissibility will be subject to the discretion of the Board or Board Agent.

(de) A party seeking to offer a ~~physical~~ object other than a document shall provide a photograph of that object, which will be received in lieu of the object. A copy of the photograph must be provided to any other party.

(ed) A party relying on voluminous or bulky documents shall provide the Board or Board Agent and any other party with written excerpts of matters therein that are being relied on.

(fe) A party wishing to submit a transcript of an audio recording as an exhibit must also submit a notarized statement from the transcriptionist that the document is a verbatim transcript of the audio recording. A copy of the audio recording and transcript must be provided to ~~any other~~~~the~~ ~~opposing~~ party no less than ~~seven~~ ~~14~~ days before the first day of hearing.

(5) A party that fails to comply with prehearing requirements set forth in the rule or ordered by the Board or Board Agent shall be denied the right to offer such evidence or make argument regarding such matter at the hearing unless good cause is shown.

(65) The Board or Board Agent may rule before hearing on one or more of the claims or defenses, or a portion of any claim or defense, asserted in a complaint or answer. The Board or Board Agent may defer issuing a proposed order on any such prehearing ruling until after a hearing is held and a Recommended Order is issued on remaining claims or defenses.

115-010-0070

Conduct of Hearings

- (1)(a) The Board or Board Agent will open the hearing with a brief introduction of parties and issues.
 - (b) Parties shall enter appearances at the beginning of the hearing.
 - (c) Parties may make opening statements.
 - (d) Parties may present evidence in support of their respective positions. Parties shall be allowed to cross-examine witnesses and object to offered evidence.
 - (e) A party may make oral or written closing argument.
- (2) Conference During Hearing. In any proceeding, the Board or Board Agent may call a conference. The results of such conference shall be stated on the record.
- (3) Stipulation. A stipulation is an agreement. The parties in any proceeding or investigation may agree on any fact. Stipulations must be approved by the Board or Board Agent and will be included in the record of the proceeding or investigation. A stipulation will be binding on the parties. Stipulations may be regarded and used as evidence at hearing.
- (4) Continuances. The Board or Board Agent may continue a hearing. The date of a continued hearing may be fixed at the time of the initial hearing or by later written notice to the parties.
- (5) Burden of Proof:
- (a) Representation, clarification and unit redesignation hearings are investigatory and there is no burden of proof on any party. Nevertheless, in disputes concerning whether employees are "public employees," there must be sufficient evidence establishing that a statutory exclusion applies. The Board or Board Agent shall determine the order of presentation of evidence and may examine witnesses, require the production of documents and call witnesses not called by the parties.
 - (b) Unfair labor practice complaint hearings are adversarial. The complainant has the burden of proof and the burden of going forward with the evidence. The respondent has the burden of proving affirmative defenses, if any.
 - (c) In a hearing on an appeal from a disciplinary action under ORS 240.555 or ORS 240.570(3), the respondent shall have the burden of proof and the burden of going forward with the evidence. The appellant shall have the burden of proving affirmative defenses. In all other ORS ch 240 cases, the appellant shall have the burden of proof and the burden of going forward with the evidence, and the respondent shall have the burden of proving affirmative defenses.
- (6) ~~Exhibits:~~

~~(a) A party intending to offer exhibits shall, where practicable, have them marked for identification and presented to any opposing party and the Board or Board Agent in a prehearing conference with the Board or Board Agent before the opening of any hearing.~~

~~(b) A party offering an exhibit shall provide two copies to the Board or Board Agent and a copy to any opposing party before seeking its admission into evidence. A failure to comply with this subparagraph shall result in the exhibit not being admitted, unless good cause is shown.~~

~~(c) A party seeking to offer an object other than a document shall provide a photograph of that object, which will be received in lieu of the object. A copy of the photograph must be provided to any other party.~~

~~(d) A party relying on voluminous or bulky documents shall provide the Board or Board Agent and any other party with written excerpts of matters therein that are being relied on.~~

~~(e) A party wishing to submit a transcript of an audio recording as an exhibit must also submit a notarized statement from the transcriptionist that the document is a verbatim transcript of the audio recording. A copy of the audio recording and transcript must be provided to the opposing party no less than 14 days before the first day of hearing.~~

~~(7) If a party chooses to have a certified transcript of the hearing prepared, the Board will be provided, at no charge, with a certified copy of such transcript.~~