

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

FILED
11-6-15 4:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the
Bureau of Labor and Industries 839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

To become effective Upon filing. Rulemaking Notice was published in the October 2015 Oregon Bulletin.

RULE CAPTION

Amendment to conform language of OAR 839-005-0125 with ORS 659A.030(1)(f) and ORS 659A.001(9).

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

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

839-005-0125

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 659A.805

Other Authority:

Statutes Implemented:

ORS 659A.001(9); ORS 659A.030(1)(f)

RULE SUMMARY

ORS 659A.030(1)(f) provides:

"(1) It is an unlawful employment practice:

***f) For any person to discharge, expel or otherwise discriminate against any other person because that other person has opposed any unlawful practice, or because that other person has filed a complaint, testified or assisted in any proceeding under this chapter or has attempted to do so."

ORS 659A.001(9) provides:

As used in this chapter:

***9) "Person" includes:

(a) One or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

(b) A public body as defined in ORS 30.260.

(c) For purposes of ORS 659A.145 and 659A.421 and the application of any federal housing law, a fiduciary, mutual company, trust or unincorporated organization."

Currently OAR 839-005-0125 provides:

"Discrimination in Retaliation for Opposing Unlawful Practices

(1) This rule interprets ORS 659A.030(1)(f).

(2) An employer will be found to have unlawfully retaliated against an employee if:

- (a) The employee has engaged in protected activity by:
 - (A) Explicitly or implicitly opposing an unlawful practice or what the employee reasonably believed to be an unlawful practice, or
 - (B) Filing a charge, testifying, or assisting in an investigation, proceeding, or lawsuit under ORS 659A, or attempting to do so;
- (b) The employer has subjected the employee to any adverse treatment, in or out of the workplace, that is reasonably likely to deter protected activity, regardless of whether it materially affects the terms, conditions, or privileges of employment; and
- (c) There is a causal connection between the protected activity and the adverse treatment."

The amendment to OAR 839-005-0125 replaces the word "employer" in the rule with the word "person," so that the rule uses the exact language of ORS 659A.030(1)(f), which it interprets. ORS 659A.030(1)(f) applies to "persons" which , as defined by ORS 659A.001(9) for purposes of ORS chapter 659A, includes but is not limited to individuals and many named types of entities. It is not necessary that these individuals and entities be employers, to be found in violation of ORS 659A.(1)(f).

Marcia Ohlemiller

Marcia.L.Ohlemiller@state.or.us

Rules Coordinator Name

Email Address