

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form

FILED
9-15-15 4:54 PM
ARCHIVES DIVISION
SECRETARY OF STATE

Bureau of Labor and Industries

839

Agency and Division

Administrative Rules Chapter Number

Marcia Ohlemiller

(971) 673-0784

Rules Coordinator

Telephone

Bureau of Labor and Industries, 800 NE Oregon St., Ste. 1045, Portland, OR 97232

Address

RULE CAPTION

Proposed 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 rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

OAR 839-005-0125

REPEAL:

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

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

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 proposed amendment to OAR 839-005-0125 would replace 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).

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association 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 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.

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.

Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address
11-03-2015 5:00 p.m.	Marcia Ohlemiller	Marcia.L.Ohlemiller@state.or.us

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.