

For your information

The Oregon Liquor Control Commission has:

Amended
 Adopted
 Repealed

OAR 845-003-0331

Effective: October 1, 2014

Note: **Bold and underlined** = new text; *strikethrough and italics* = deleted text

845-003-0331

Employee Representation at Contested Case Hearings

(1) The Commission's goal in contested case hearings is to have a full and accurate record upon which the Commissioners can make the best decision. To help ensure a full record, ~~the Commission allows~~ employees **are allowed** to represent the Commission in certain contested case hearings. The employee representative's role is to represent the Commission in a way that supports objective fact finding and encourages an open, fair, and efficient process.

(2) A Commission employee may represent the Commission in contested case hearings ~~involving violations, license or service permit applications, alcohol server education provider and instructor certification applications, and liquor store agent contract violations or disputes.~~ **in the following classes of cases:**

(a) Violations of OLCC statutes or rules described in ORS Chapters 471 and 473, statutes related to the Oregon Bottle Bill in ORS Chapter 459A, ORS 474.115, ORS 459.992, and OAR Chapter 845;

(b) License or service permit applications and denial, non-renewal, suspension, revocation or cancellation of licenses or service permits;

(c) Retail Sales Agent Agreement violations or disputes, except for suspensions or terminations;

(d) Privilege Tax disputes under ORS 473.060(4); and

(e) Applications for certificates of approval (ORS 471.244 and ORS 471.251), wine self-distribution permits (ORS 471.274), direct shipper permits (ORS 471.282), and importation permits and open purchase orders (ORS 471.404(1)(e) and ORS 471.730(8)), and suspension, revocation, or cancellation of these endorsements.

(3) The representative's responsibilities include, but are not limited to:

(a) Presenting evidence;

(b) Asking questions of all witnesses;

(c) Presenting information about the facts, and advocating for staff's position surrounding the facts;

(d) Presenting information on how the facts apply to the statutes or rules directly related to the issues in the contested case;

(e) Presenting information comparing Commission actions in similar situations;

(f) Presenting information about the literal meaning of the statutes or rules that apply to the issues in the contested case; and

(g) Presenting information about the admissibility of evidence or the correctness of procedures being followed.

(4) The employee representative may not make legal arguments. "Legal arguments" include arguments on:

(a) The jurisdiction of the Liquor Control Commission to hear the contested case;

(b) The constitutionality of a statute or rule or the application of a constitutional requirement to the Liquor Control Commission; and

(c) The application of court precedent to the facts of the particular contested case proceeding.

(5) When an employee represents the Commission in a contested case hearing, the ~~presiding officer~~ **administrative law judge** will advise the employee representative of the way in which objections may be made. This advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objections. If the objections involve legal argument, the ~~presiding officer~~ **administrative law judge** will provide reasonable opportunity for the employee representative to consult legal counsel and permit legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ~~ORS 183~~, ORS 183.341(2), ~~ORS 183.415(4)~~, ~~183.450(3)~~ & ~~471.030~~ **183.452 & 471.730(5) & (6)**

Stats. Implemented: ~~ORS 183.450(7) & (8)~~ **ORS 183.341(2) & 183.452**

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