Paid Family and Medical Leave Insurance (PFMLI)

Proposed Oregon Administrative Rules - Batch 4: Appeals

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Appeals

In order to implement and administer the PFMLI program, the Oregon Employment Department is promulgating permanent administrative rules in accordance with ORS chapter 657B. ORS 657B.410 makes appeals of PFMLI determinations by the department subject to contested case provisions under ORS chapter 183. As allowed by ORS 183.630(2), the Oregon Employment Department has submitted a request to the Oregon Department of Justice (DOJ) and the Attorney General (AG) for an exemption for the PFMLI program from the Attorney General's Model Rules for contested cases. The proposed procedural rules for PFMLI contested cases are modeled on the Employment Department's procedural rules for Unemployment Insurance program hearings, modified where appropriate to be consistent with statutes in ORS chapter 183 and ORS chapter 657B. The Attorney General's final decision on the requested exemption from the Model Rules of procedure will not be made until the PFMLI contested case rules are in final form, but the PFMLI program is consulting closely with DOJ, as well as consulting with the Chief Administrative Law Judge of the Office of Administrative Hearings (OAH) and others on the proposed rules. PFMLI program will diligently pursue the exemption and believes that if the AG has any concerns that might prevent such an exemption, that they can be addressed to her satisfaction before the rules are adopted.

471-070-8005 - Appeals: Request for Hearing

(1) A request for hearing may be filed on forms provided by the department. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal and it can be determined what issue or decision is being appealed.

(2) A request for hearing on an administrative decision related to the payment or amount of Paid Family and Medical Leave Insurance (PFMLI) benefits under ORS 657B.100 and 657B.120 must be in writing and filed within 60 days after the administrative decision is issued and may be filed:

(a) By mail, fax, e-mail, or other means, as designated by the department in the notice of administrative decision that is being appealed; or

(b) In person at any publicly accessible Employment Department office in Oregon.

(3) A request for hearing on an administrative decision related to PFMLI contributions under ORS 657B.130 or 657B.370, equivalent plans under ORS 657B.210, or penalties imposed under ORS 657B.910 or 657B.920, must be in writing and filed within 20 days after the administrative decision is issued and may be filed:

(a) By mail, fax, e-mail, or other means, as designated by the department in the notice of administrative decision that is being appealed;

(b) In person at any publicly accessible Employment Department office in Oregon; or

(c) Through the use of the department's secured website, as provided on the notice of administrative decision that is being appealed.

(4) The filing date for any request for hearing shall be determined as follows:

(a) When delivered in person to any Employment Department office in Oregon, the filing date is the date of delivery to the department, as evidenced by the receipt date stamped or written by the department employee who receives the document.

(b) When filed by mail, the date of filing is the postmarked date affixed by the United States Postal Service or, in the absence of a postmarked date, the most probable date of mailing.

(c) When filed by fax, the date of filing is the encoded date on the fax document, unless such date is absent, illegible, or improbable, in which case the filing date is the fax receipt date stamped or written by the department employee, if available. If a filing date cannot otherwise be determined, the date the fax was most probably sent shall be the date of filing.

(d) When filed by e-mail, the date of filing is the date of delivery, as evidenced by the receipt date on the department's e-mail system, according to Pacific Standard Time.

(e) When filed through the department's secured website, the date of filing is the date indicated in the request submission, according to Pacific Standard Time.

(f) When filed by any other means, the date of filing is the date of delivery, as evidenced by the receipt date stamped or written by the employee of the department who receives the document.

(5) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8010 - Appeals: Assignment to Office of Administrative Hearings

(1) When a request for hearing has been timely filed as provided in ORS 657B.410, 657B.370, 657B.910, 657B.920, and any applicable rules, the department shall refer the request to the Office of Administrative Hearings established under ORS 183.605, for assignment to an administrative law judge.

(2) The administrative law judge shall review the determination and, if requested by the employer or covered individual, shall grant a hearing unless a hearing has previously been afforded the requestor on the same grounds that are set forth in the determination.

(3) The Director of the Employment Department shall notify the parties of their right, upon request, to receive copies of all documents and records in the possession of the department relevant to the administrative decision, including any statements of the claimant, employee, employer or employer's agent(s).

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8015 - Appeals: Contested Case Proceedings Interpretation for Non-English-speaking Persons

(1) This rule applies to the department's Paid Family and Medical Leave Insurance contested case proceedings that require the services of an interpreter for a non-English-speaking person who is a party or witness.

(2) For purposes of this rule:

(a) A "non-English-speaking person" means a person who, by reason of place of birth, national origin, or culture, speaks a language other than English and does not speak English at all or with adequate ability to communicate effectively in the proceedings.

(b) A "qualified interpreter" means a person who is readily able to communicate with the non-English-speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English-speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style, and register of the original statement, without additions or omissions. A qualified interpreter does not include any person who is unable to interpret the dialect, slang, or specialized vocabulary used by the party or witness.

(3) In conducting contested case proceedings under this rule, the department will comply with the applicable provisions of ORS 45.272 to 45.292.

(4) If a non-English-speaking person is a party or witness in a contested case proceeding:

(a) The administrative law judge shall appoint a qualified interpreter certified under ORS 45.291, if available, to interpret the proceedings to a non-English-speaking party or witness, to interpret the testimony of a non-English-speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) If a qualified interpreter certified under ORS 45.291 is unavailable, the administrative law judge shall appoint a qualified interpreter that is not certified.

(c) A fee may not be charged to any party or witness for the appointment and services of an interpreter in a contested case proceeding to interpret testimony of a non-English-speaking party or witness, to interpret the proceedings to a non-English-speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge, except as provided by ORS 45.275(4) and subsection (4)(f) of this rule.

(d) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a different interpreter may be appointed as provided in ORS 45.275(4).

(e) If a party or witness is dissatisfied with the interpreter appointed by the administrative law judge, the party or witness may request a different interpreter, except that good cause must be shown for a substitution if the substitution will delay the proceeding. Good cause exists when information in the record establishes that the party or witness would be unable to effectively communicate without the assistance of a substitute interpreter. Any party may object to use of any interpreter for good cause.

(f) Fair compensation for the services of an interpreter shall be paid by the department except, when a substitute interpreter is used for reasons other than good cause, the party requesting the substitute shall bear any additional costs beyond the amount that was or would have been paid to the original interpreter.

(5) In determining if a person is a qualified interpreter, the administrative law judge shall consider the following factors to ascertain whether the individual will be able to readily communicate with the non-English-speaking person and orally translate the meaning of the statements made from the English language to the language spoken by the non-English-speaking person:

(a) The person's native language;

(b) The number of years of education the person has in the language to be interpreted and the English language;

(c) The number of years of specialized training that has provided the person with the opportunity to learn and use the language to be interpreted and the English language;

(d) The amount of time the person has spent in countries where the language to be interpreted is the primary language;

(e) The number of years the person has spent acquiring the ability to read or write, or both, the language to be interpreted and the English language;

(f) The person's previous experience as an interpreter;

(g) The person's ability to interpret in a manner that conserves the meaning, tone, level, style, and register of the original statement, without additions or omissions;

(h) The person's ability to interpret the dialect, slang, or specialized vocabulary of the original statement; and

(i) The person's knowledge of the Oregon Code of Professional Responsibility for Interpreters in Oregon Courts.

(6) In appointing an interpreter under this rule, the administrative law judge shall use a procedure and ask questions or make statements on the record substantially similar to the following:

(a) "Please state your name for the record."

(b) "Are you currently qualified as an interpreter in Oregon in accordance with ORS 45.275 in the language to be interpreted?"

(c) "Is there any situation or relationship, including knowing any parties or witnesses in this case, that may be perceived by me, any of the parties, or any witnesses as a bias or conflict of interest in or with the parties or witnesses in this case?" If the prospective interpreter answers affirmatively, the administrative law judge shall inquire further to ascertain whether any disqualifying bias or conflict of interest exists with any of the parties or witnesses.

(d) "Are you able to understand me, the parties, and the witnesses in this proceeding?"

(e) "In your opinion, are the parties and witnesses able to understand you?"

(f) Directed at the parties and witnesses requiring the assistance of an interpreter: "Are you able to understand the interpreter?"

(g) "Are you able to work cooperatively with me and the person in need of an interpreter or counsel for that person?"

(h) If the foregoing questions in subsections (b), (d), (e), (f), and (g) are answered affirmatively and the administrative law judge is satisfied that the prospective interpreter has no bias or conflict of interest under

question (c), then the administrative law judge shall state: "I hereby appoint you as interpreter in this matter."

(i) If a written statement of the prospective interpreter's qualifications is available, the administrative law judge shall enter that statement into the record. If a written statement of the prospective interpreter's qualifications is not available, the administrative law judge shall require the prospective interpreter to state their qualifications on the record. If the written statement is incomplete, or if the administrative law judge or a party questions the interpreter's qualifications, the administrative law judge shall require the prospective interpreter to supplement their written statement of qualifications by providing additional information regarding the prospective interpreter's qualifications on the record.

(j) If the administrative law judge determines that the person is a qualified interpreter, then the administrative law judge shall state on the record, "Based on your knowledge, skills, training, or education, I find that you are qualified to act as an interpreter in this matter." If the administrative law judge is not satisfied that the person is capable of serving as a qualified interpreter, the administrative law judge shall not appoint the person to serve in such capacity.

(k) The administrative law judge must then administer the oath or affirmation for the interpreter: "Under penalty of perjury, do you (swear) (affirm) that you will make a true and impartial interpretation of the proceedings in an understandable manner, using your best skills and judgment in accordance with the standards and ethics of the interpreter profession?"

(L) After receiving the qualified interpreter's oath or affirmation, the administrative law judge shall state: "I hereby appoint you as interpreter in this matter."

(m) On the record, the administrative law judge will then instruct any non-English-speaking party or witness as follows: "If, at any time during the hearing, you do not understand something, or believe there are problems with the interpretation, you should indicate by interrupting and calling this to my attention."

(7) If the department is on notice that a non-English-speaking person is in need of an interpreter, the department shall provide notice of the need for an interpreter to the Office of Administrative Hearings (OAH), which shall schedule an interpreter for that person's contested case proceeding. If the department is not on notice that an interpreter is needed for a non-English-speaking person, the non-English-speaking person, or that person's representative, must notify the OAH of such need in advance of the contested case proceeding for which the interpreter is requested.

(a) If, at the time of or during the contested case proceeding, it becomes apparent that an interpreter is necessary for a full and fair inquiry, the administrative law judge shall arrange for an interpreter and may postpone the proceeding, if necessary.

(b) The request for an interpreter may be made orally or in writing to the administrative law judge and must be made as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter is requested.

(c) For good cause, the administrative law judge may waive the 14-day advance notice.

(d) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter;

(B) The person's status as a party or a witness in the proceeding; and

(C) The language and dialect, if applicable, to be interpreted.

(8) If a party is non-English-speaking, English language exhibits are to be handled as follows:

(a) If the non-English-speaking party confirms on the record that an interpreter already has interpreted an English language document for the party, the administrative law judge may receive the document into evidence without further interpretation of the document, unless necessary to assist a witness to provide relevant testimony.

(b) If the administrative law judge intends to receive into evidence an English language document that has not been previously interpreted under subsection (8)(a) of this rule, the administrative law judge shall read the document and allow for contemporaneous interpretation. If the document is lengthy, the administrative law judge need not read into the record clearly irrelevant portions of the document, provided however that the administrative law judge shall summarize the remaining content of the document on the record.

(c) If, at the time of the proceeding, the administrative law judge does not rule on the admissibility of an offered English language document, then the administrative law judge shall read the offered document into the record and allow contemporaneous interpretation, subject to the exception in subsection (8)(b) of this rule. The interpreter shall interpret all such offered documents or portions of such documents read into the record.

(d) If an offer of proof for excluded evidence includes an English language document, the interpreter shall interpret the document, subject to the exception in subsection (8)(b) of this rule, for a non-English-speaking party on the record, or off the record if so confirmed on the record by the non-English-speaking party.

(e) Offered English language documents that the administrative law judge decides to exclude, in whole or in part, as irrelevant, immaterial, or unduly repetitious do not need to be interpreted. The administrative law judge shall orally summarize the contents of such offered but excluded documents, and the interpreter shall interpret that summary.

(9) A party may offer non-English language documents. If such a document is received into evidence, it shall be translated in writing or read into the record in English by the interpreter. Although the non-English language document will be part of the record, the English version of the document shall be the evidence in the case.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8020 - Appeals: Contested Case Proceedings Interpretation for Individuals with a Disability

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "qualified interpreter" for an individual with a disability means a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability.

(2) If an individual with a disability is a party or witness in a contested case proceeding:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) A fee may not be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. A fee may not be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the individual is an individual with a disability for purposes of this rule.

(4) When an interpreter for an individual with a disability is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by administrative law judge, a substitute interpreter may be used as provided in ORS 45.275 (4).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any qualified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding. Good cause exists when information in the record establishes that the party or witness would be unable to effectively communicate without the assistance of a substitute interpreter. Any party may object to use of any interpreter for good cause.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the department except, when a substitute interpreter is used for reasons other than good cause, the party requesting the substitute shall bear any additional costs beyond the amount that was or would have been paid to the original interpreter.

(5) The administrative law judge shall require any interpreter for an individual with a disability to state the interpreter's name on the record and whether they are certified under ORS 45.291. If the interpreter is not certified under ORS 45.291, the interpreter must state or submit their qualifications on the record and must affirm that they

will make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter or assistive communication device for an individual with a disability must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14-day advance notice.

(b) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is on behalf of an individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8025 - Appeals: Late Request for Hearing

(1) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or Office of Administrative Hearings (OAH) mailed it to an incorrect address despite having the correct address;

(B) For telephone or video conference hearings, unanticipated, and not reasonably foreseeable, loss of telephone or video conference service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(2) Notwithstanding section (1) of this rule, good cause for failing to file a timely request for hearing shall exist when a party provides satisfactory evidence that the department failed to follow its own policies with respect to providing service to:

(a) a non-English-speaking person, including the failure to communicate orally or in writing in a language that could be understood by the non-English-speaking person upon gaining knowledge that the person needed or was entitled to such assistance; or

(b) an individual with a disability who cannot readily understand because of deafness or a physical hearing impairment, cannot communicate because of a physical speaking impairment, or cannot read because of a

vision impairment, including the failure to communicate orally or in writing in a manner that could be understood by the individual with a disability upon gaining knowledge that the person needed or was entitled to such assistance.

(3) "A reasonable time," as used in section (4) of this rule, is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party shall set forth the reason(s) for filing a late request for hearing in a written statement, which the OAH shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.

(5) Nothing in section (4) of this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8030 - Appeals: Notice of Hearing

(1) To afford all parties a reasonable opportunity for a fair hearing, at least 14 days in advance of the hearing a notice of hearing that includes the time, date, and place of the hearing, a statement of the authority and jurisdiction under which the hearing is held, a statement generally identifying the issue(s) to be considered, and all other information required under ORS 183.413(2), shall be mailed to the parties or their authorized agents at their last known address, as shown in the department's records, or shall be sent electronically to the parties, at the location or address shown in the department's records, when permitted and where the party has opted for electronic notification. The parties entitled to notice may waive the requirement for at least 14 days' notice to expedite the process.

(2) The following parties shall be notified of a hearing when a request for hearing related to a benefit claim has been filed:

(a) The Director;

(b) The claimant;

(c) The employer entitled to notice of the determination or decision under OAR 471-70-1320.

(3) In all other cases for which ORS chapter 657B provides for hearing, parties who shall be notified of a hearing are:

(a) The Director; and

(b) The employer that has filed a request or application for hearing.

(4) To best serve the parties involved, an administrative law judge may set a hearing at a convenient location or convenient locations.

(5) An administrative law judge may consolidate two or more hearings whenever it appears to the administrative law judge that such procedure will not unduly complicate the issues or jeopardize the rights of any of the parties.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8035 - Appeals: Subpoenas

(1) Subpoenas may be issued in a contested case on the department's motion. In addition, a subpoena for witness testimony may be issued by an attorney for a party, and, upon the timely request of a party an administrative law judge may issue a subpoena, requiring a person to appear at a scheduled hearing for the purpose of giving testimony, or producing books, records, documents, or other physical evidence.

(2) A party that submits a request for subpoena must show:

(a) The name of the witness and the address where the witness can be served the subpoena;

(b) That the testimony of the person is material; and

(c) That the person will not voluntarily appear.

(3) If the requesting party wishes the witness to produce books, records, documents, or other physical evidence, the party must also show:

(a) The name or a detailed description of the specific books, records, documents, or other physical evidence the witness should bring to the hearing;

(b) That such evidence is generally relevant and the request is reasonable in scope; and

(c) That such evidence is in the possession of the person who will not voluntarily appear and bring such evidence to the hearing.

(4) An administrative law judge may limit the number of subpoenas for witness material to the proof of any one issue at the hearing.

(5) Service of the subpoena upon the witness is the responsibility of the party requesting the subpoena.

(6) A witness who attends a hearing pursuant to subpoena issued under this rule is entitled to witness fees and mileage as provided in ORS 44.415(2) for subpoenaed witnesses. Fees will be paid by check mailed subsequent to the conclusion of the hearing. The witness shall request payment of fees by completion of forms approved by the department. Payment of fees shall be made promptly upon receipt of the request for payment.

(7) Only witnesses, who are not a party to the proceeding, who attend a hearing pursuant to subpoena issued under this rule may be paid or reimbursed by the department for witness fees and mileage.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8040 - Appeals: Postponement of Hearing

(1) At the request of a party or on the administrative law judge's own initiative, an administrative law judge may order, orally or in writing, that a hearing be postponed.

(2) A postponement may be granted by Office of Administrative Hearings staff at the request of a party if:

(a) The request is promptly made after the party becomes aware of the need for postponement; and

(b) The party has good cause, as stated in the request, for not attending the hearing at the time and date set.

(3) For the purpose of subsection (2)(b) of this rule, good cause exists when:

(a) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(b) Failure to grant the postponement would result in undue hardship to the requesting party.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8045 - Appeals: Telephone and Video Conference Hearings

(1) Unless precluded by law, the Office of Administrative Hearings (OAH) may, in its discretion, hold a hearing or portion of a hearing by telephone or video conference. Nothing in this rule precludes the OAH from allowing some parties or witnesses to attend by telephone or video conference while others attend in person.

(2) The OAH may direct that a hearing be held by telephone or video conference upon request or on its own motion.

(3) The OAH shall make an audio, video or stenographic record of any telephone or video conference hearing.

(4) At least seven days prior to commencement of an evidentiary hearing that is held by telephone or video conference, each party shall provide to all other parties and to the OAH copies of documentary evidence that it will seek to introduce into the record. The department shall provide to all parties and to the OAH copies of all documents and records in the possession of the department that will be introduced at the hearing as exhibits, including any statements of the claimant, employee, employer or employer's agent(s), and all jurisdictional documents.

(5) Nothing in this rule precludes any party from seeking to introduce documentary evidence in addition to evidence described in section (4) of this rule, during the telephone or video conference hearing and the administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the OAH and to the other parties, the hearing may be continued upon the request of any party for sufficient time to allow the party to obtain and review the evidence.

(6) As used in this rule, "telephone" means any two-way electronic communication device.

(7) As used in this rule, "video conference" means a virtual, online meeting over the internet that simulates a face-to-face meeting.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8050 - Appeals: The Hearing

(1) The purpose of the hearing is to inquire fully into the matters at issue and to make a decision on the basis of the evidence shown at the hearing.

(2) No administrative law judge shall participate in a hearing if the administrative law judge has any private interest in the outcome of the hearing or holds any bias or prejudice which would impair a fair and impartial hearing. All testimony at any hearing before an administrative law judge shall be under oath or affirmation.

(3) The Office of Administrative Hearings shall make an audio, video or stenographic record of the hearing.

(4) The administrative law judge shall conduct and control the hearing. The administrative law judge shall determine the order of the presentation of evidence, administer oaths, examine any witnesses, and may, either on the

administrative law judge's own motion or a party's request, exclude witnesses from the hearing room. Parties, or their authorized representatives, shall have the right to give testimony and to call and examine witnesses.

(5)

(a) Parties may appear on their own behalf or by authorized agents or counsel. The administrative law judge may require agents, other than counsel, when appearing without the party, to provide written authorization to appear for such party. When a party makes a general appearance at a hearing, defects in notice are waived.

(b) When a party is not represented at the hearing by an authorized representative, the administrative law judge shall explain the issues involved in the hearing and the matters that the unrepresented party must either prove or disprove. The administrative law judge shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the administrative law judge in the hearing.

(6) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude the administrative law judge from entering a decision unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of serious affairs shall be admissible. If a question of privilege arises, the administrative law judge shall fully and clearly inform the party of any rights as to such privilege and deal with procedural problems created by the existence of such issue in a way which protects the party's right to a fair hearing. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(7) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except for notice taken, no other factual information or evidence shall be considered by the administrative law judge in making the decision. The experience, technical competence, and specialized knowledge of the administrative law judge may be utilized in the evaluation of the evidence presented. The administrative law judge may offer and receive evidence deemed relevant and essential by the administrative law judge to a fair disposition of the issues.

(8) The administrative law judge may take official notice of judicially cognizable facts. The administrative law judge may take notice of general, technical, or scientific facts within the administrative law judge's specialized knowledge and may take notice of documents, records, and forms retained within the department's files. The administrative law judge shall notify the parties of any official notice taken during the hearing or in the decision prior to such decision becoming final. Parties shall be afforded an opportunity to contest the material so noticed during the hearing or prior to the administrative law judge's decision becoming final.

(9) The administrative law judge shall render a decision on the issue and law involved as stated in the notice of hearing. The administrative law judge's jurisdiction and authority is confined solely to the issue(s) arising under the Paid Family and Medical Leave Insurance laws in ORS chapter 657B. Subject to objection by any party, the administrative law judge may also hear and enter a decision on any issue not previously considered by the authorized representative of the Director and which arose during the hearing.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8055 - Appeals: Continuance of Hearing

(1) At the request of a party or on the administrative law judge's own initiative, an administrative law judge may order, orally or in writing, that a hearing be continued.

(2) An administrative law judge may grant a continuance at the request of a party if:

(a) The request is made prior to the issuance of the administrative law judge's decision; and

(b) The party has good cause, as stated in the request, for continuing the hearing.

(3) For the purpose of subsection (2)(b) of this rule, good cause exists when:

(a) The circumstances causing the request are beyond the reasonable control of the requesting party; and

(b) Failure to grant the continuance would result in undue hardship to the requesting party.

(4) An administrative law judge other than the one who presided at the first hearing may conduct a continued hearing.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8060 - Appeals: Office of Administrative Hearings Transmittal of Questions

(1) Questions from the administrative law judge regarding the following issues related to the Paid Family and Medical Leave Insurance program may be transmitted to the department:

(a) The department's interpretation of its rules and applicable statutes; or

(b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the Director/department, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the department.

(3) The administrative law judge shall submit any transmitted question in writing to the department. The submission shall include a summary of the matter in which the question arises and shall be served on the department representative and parties in the manner required by OAR 471-070-8030.

(4) The department may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the department responds to the transmitted question.

(6) The department shall respond in writing to the transmitted question within a reasonable time. The department's response must be delivered by a person with authority to speak on the question transmitted.

(7) The department's response shall be made a part of the record of the hearing. The department may decline to answer the transmitted question. The department shall provide its response to the administrative law judge and to each party. The parties may reply to the department's response within a reasonable time.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8065 - Appeals: Administrative Law Judge's Decision

(1) After the administrative law judge has given all parties reasonable opportunity for a fair hearing, the administrative law judge shall promptly affirm, modify or set aside the decision of the department with respect to the claim. The administrative law judge shall promptly prepare and serve a written decision to all parties entitled to notice of the administrative law judge's decision, including any dismissal of the request for hearing as provided in OAR 471-070-8070, and the reasons for the decision. In the case of an assessment, the administrative law judge may increase or decrease the amount of the assessment.

(2) The administrative law judge's decision shall be based upon the evidence in the hearing record and upon any stipulated or officially noticed facts. Any findings of fact by the administrative law judge shall be based upon reliable, probative, and substantial evidence.

(3) The administrative law judge may address issues raised by evidence in the record, including but not limited to the claims filed subsequent to issuance of a decision to allow or deny a benefit claim or employer's application for approval of an equivalent plan under ORS 657B.210, notwithstanding the scope of the issues raised by the parties or the arguments in a party's request for hearing.

(4) The administrative law judge's decision shall be in an approved form and shall contain:

(a) A caption clearly identifying the parties;

(b) A statement of jurisdiction;

(c) A statement of the issues and law involved;

(d) Findings of fact;

(e) Conclusions based upon the findings of fact; or a statement adopting conclusions set forth in the appealed administrative decision; and

(f) A decision setting forth the action to be taken.

(5) Copies of the administrative law judge's decision shall be sent to the parties, or their authorized agents, at their last known address or electronically when permitted and the parties have opted for electronic notification, as shown on record.

(6) A decision of the administrative law judge becomes final 60 days after the date of notification or the mailing of the decision to the Director and to the employer or covered individual at the last-known address of record with the Director unless:

(a) The administrative law judge on the administrative law judge's own motion reviews the decision and issues an amended decision in which case the amended decision becomes the final decision; or

(b) A petition is filed in the Court of Appeals in accordance with ORS 183.482.

(7) An administrative law judge may issue an amended decision prior to the previous decision becoming final. The amended decision shall be served as required by these rules and shall be subject to review.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8070 - Appeals: Dismissals of Requests for Hearing

(1) An administrative law judge may order that a request for hearing be dismissed upon request from the party to withdraw the request for hearing.

(2) An administrative law judge may order that a request for hearing be dismissed upon request of the Director or the authorized representative of the Director after either one has:

(a) Issued a new or amended determination or decision that grants the party that which was placed in issue by the request for hearing; or

(b) Withdrawn or cancelled the determination or decision upon which the request for hearing was based.

(3) On the administrative law judge's own initiative, an administrative law judge may order that a request for hearing be dismissed if:

(a) The party fails to file the request for hearing within the time allowed by statute or rule;

(b) The party fails to provide information requested by the administrative law judge or their designee;

(c) The party fails to appear at the hearing at the time and place stated in the notice of hearing;

(d) The request for hearing has been filed prior to the service of the decision or determination that is the subject of the request;

(e) The request for hearing is made by a person not entitled to a hearing on the merits or is made with respect to a determination or decision of the Director or authorized representative of the Director with respect to which there is no lawful authority to request a hearing.

(4) A dismissal by the administrative law judge is final unless the party whose request for hearing has been dismissed files, within 20 days after the dismissal notice was mailed to the party's last-known address, a request under OAR 471-070-8075 to reopen the hearing.

(5) The Director of the Employment Department may dismiss a request for hearing if the conditions described in sections (1), (2), (3)(d) or (3)(e) of this rule exist.

(6)

(a) A dismissal by the Director under section (5) of this rule is final unless the party whose request for hearing has been dismissed files, within 20 days after the dismissal notice was mailed to the party's last-known address, a request for hearing regarding the dismissal.

(b) If the party files a timely request under subsection (6)(a) of this rule, the hearing regarding the dismissal shall be assigned to an administrative law judge from the Office of Administrative Hearings under OAR 471-070-8010.

(c) The administrative law judge assigned under subsection (6)(b) of this rule shall determine whether the dismissal was appropriately entered. If the dismissal was not appropriately entered, the administrative law judge shall decide the underlying issue upon which the hearing was requested.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8075 - Appeals: Reopening of a Hearing

(1) After service of an administrative law judge's written decision as set forth in OAR 471-070-8065, an administrative law judge may reopen the hearing if the party:

(a) Requesting the reopening failed to appear at the hearing;

(b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request with Office of Administrative Hearings (OAH) to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) "Good cause" exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party's reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or OAH mailed it to an incorrect address despite having the correct address;

(B) For telephone or video conference hearings, unanticipated, and not reasonably foreseeable, loss of telephone or video conference service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement which the OAH shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge's ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The date that a request to reopen is considered filed shall be determined under OAR 471-070-8005.

(6) Nothing in section (3) of this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]

471-070-8080 - Appeals: Late Request to Reopen Hearing

(1) The period within which a party may request reopening may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) “Good cause” exists when an action, delay, or failure to act arises from an excusable mistake or from factors beyond an interested party’s reasonable control.

(a) Good cause includes but is not limited to:

(A) Failure to receive a document because the department or Office of Administrative Hearings (OAH) mailed it to an incorrect address despite having the correct address;

(B) For telephone or video conference hearings, unanticipated, and not reasonably foreseeable, loss of telephone or video conference service.

(b) Good cause does not include:

(A) Failure to receive a document due to not notifying the department or OAH of an updated address while the person is claiming benefits or if the person knows, or reasonably should know, of a pending appeal;

(B) Not understanding the implications of a decision or notice when it is received.

(3) “A reasonable time,” is within seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the OAH shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time.

(5) The date that a late request to reopen is considered filed shall be determined under OAR 471-070-8005.

(6) Nothing in section (4) of this rule prevents the OAH from scheduling a hearing if, in the sole judgment of the OAH, testimony is required.

(7) The administrative law judge’s decision on a late request to reopen shall be in writing and mailed to the parties.

[Stat. Auth.: ORS 657B.410; Stats. Implemented: ORS 657B.410]