



May 24, 2018

Christine E. Lewis  
Legislative Director  
Bureau of Labor and Industries  
800 NE Oregon Street, Suite, 1045  
Portland, OR 97232

RE: Administrative Rules regarding Employee Work Schedules

Dear Ms. Lewis:

Thank you for the opportunity to provide comments today in response to the Bureau of Labor and Industries' proposed rule to implement SB 828 (2017). As a reference, the Oregon State Chamber of Commerce (OSCC) represents 75 Chambers of Commerce and over 24,000 Oregon businesses. Many of our member businesses are impacted by the proposed SB 828 rules.

There are a few key areas OSCC wishes to highlight as you undertake the final rules:

**839-020-0030**

**Overtime**

OSCC supports the clarification that predictive pay as required under ORS 653.442 or ORS 653.455 is not part of any overtime calculation.

**839-026-0000**

**Definitions**

OSCC supports the revised language concerning the definition of "unanticipated customer needs". In the hospitality and food service industries, there are many instances where establishments cannot predict customers showing up. For restaurants, particularly in Oregon, weather can be a huge factor in an increase in customer demand which could not have been predicted. This revised language is important to address industry-specific needs.

**839-026-0010**

**Covered Employees and Integrated Enterprises**

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OSCC appreciate the elimination of the proposed language in both 4(a) and (c) in this section surrounding the sharing of technology or other systems.

### **839-026-0015**

#### **Jointly Employed Employees**

OSCC finds the proposed rules in 839-026-0015, “Jointly Employed Employees” to be overly broad and inconsistent with legislative intent. SB 828 clearly exempts temporary employees in Section 2(2)(b)(C). In addition to clear statutory language, testimony before the House Committee on Rules confirmed that an employer is covered only if they meet the requirements of the two-pronged framework in SB 828-B:

1. The business must be covered, as defined by the 2012 NAICS codes for retail, hospitality and food service establishments; and
2. The bill is limited to employees who are actually providing the type of service covered by the bill. <sup>1</sup>

This two-pronged framework is based on the Seattle ordinance and was confirmed through a question and answer on the Oregon House floor at the time of passage between Representative Jodi Hack (R-Salem) and the carrier of SB 828-B, Representative Ann Lininger (D-Lake Oswego). <sup>2</sup>

Legislative intent on this matter is clear. OSCC respectfully asks BOLI to adhere to the plain language of SB 828 and legislative intent and amend 839-026-0015 to exempt temporary employees from the requirements of the scheduling law.

### **839-026-0030**

#### **Advance Notice of Work Schedule**

The clarification allowing employers to modify schedules, if provided beyond the 7-day/14-day requirement is appreciated as reflected in (7).

### **839-026-0050**

#### **Record Retention Requirements**

OSCC appreciates the clarification that records may be stored electronically. However, we have concerns around several confusing and conflicting requirements under this section, specifically:

<sup>1</sup> House Committee on Rules. June 27, 2017. [http://oregon.granicus.com/MediaPlayer.php?clip\\_id=24038](http://oregon.granicus.com/MediaPlayer.php?clip_id=24038) (15:31)

<sup>2</sup> Oregon House of Representatives floor session. June 29, 2017.

[http://oregon.granicus.com/MediaPlayer.php?view\\_id=46&clip\\_id=24058](http://oregon.granicus.com/MediaPlayer.php?view_id=46&clip_id=24058) (Representative Hack, 1:04:38)



**2(a) The written work schedules provided by the employer to employees and posted in a conspicuous and accessible location as required by ORS 653.436;**

OSCC suggests deleting the posting language as it implies record keeping of where it was posted.

**2(d) If, pursuant to ORS 653.432, the employer maintains a voluntary standby list, the employer's notification to the employee about the list and the employee's request or agreement to be included on the list;**

This section is unnecessary given the requirement on the employer to collect written consent by the employee to be added to the voluntary standby list. The employee's written request or agreement to be included on the voluntary standby list should be sufficient for this record keeping requirement.

Further, the "employer's notification to the employee about the list" could be interpreted to mean employers will be required to maintain additional record keeping specific to each employee about when information regarding the voluntary standby list was provided, rather than a copy of the flyer included with the employee's hiring materials.

Thank you for the opportunity to provide comments in response to BOLI's proposed rules to implement SB 828.

Sincerely,

A handwritten signature in black ink that reads "Colene Martin". The signature is written in a cursive, flowing style.

Colene Martin  
2018 OSCC Board Chair