

LC 474
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1/15/13 (BLS/ps)

D R A F T

SUMMARY

Deletes requirement to provide telephone numbers in request for modification of child support orders.

Removes requirement that holder of child support rights apply to court for withholding order where obligor has been granted exception to withholding.

Requires year of birth instead of date of birth in suspension notice.

Modifies definition of “rehire” to apply to individuals unemployed for more than 60 days.

A BILL FOR AN ACT

1
2 Relating to child support program administration; amending ORS 25.378,
3 25.759, 25.790 and 416.425.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 416.425 is amended to read:

6 416.425. (1) Any time support enforcement services are being provided
7 under ORS 25.080, the obligor, the obligee, the party holding the support
8 rights or the administrator may move for the existing order to be modified
9 under this section. The motion shall be in writing in a form prescribed by
10 the administrator, shall set out the reasons for modification and shall state
11 the [*telephone number and*] address of the party requesting modification.

12 (2) The moving party shall state in the motion, to the extent known:

13 (a) Whether there is pending in this state or any other jurisdiction any
14 type of support proceeding involving the dependent child, including a pro-
15 ceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100,
16 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS chapter 110;

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 and

2 (b) Whether there exists in this state or any other jurisdiction a support
3 order, as defined in ORS 110.303, involving the dependent child, other than
4 the order the party is moving to modify.

5 (3) The moving party shall include with the motion a certificate regarding
6 any pending support proceeding and any existing support order other than
7 the order the party is moving to modify. The party shall use a certificate that
8 is in a form prescribed by the administrator and include information required
9 by the administrator and subsection (2) of this section.

10 (4) The moving party shall serve the motion upon the obligor, the obligee,
11 the party holding the support rights and the administrator, as appropriate.
12 The nonrequesting parties must be served in the same manner as provided
13 for service of the notice and finding of financial responsibility under ORS
14 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party must be
15 served by first class mail to the requesting party's last known address. The
16 nonrequesting parties have 30 days to resolve the matter by stipulated
17 agreement or to serve the moving party by regular mail with a written re-
18 sponse setting forth any objections to the motion and a request for hearing.
19 The hearing shall be conducted under ORS 416.427.

20 (5) When the moving party is other than the administrator and no ob-
21 jections and request for hearing have been served within 30 days, the moving
22 party may submit a true copy of the motion to the administrative law judge
23 as provided in ORS 416.427, except the default may not be construed to be
24 a contested case as defined in ORS chapter 183. Upon proof of service, the
25 administrative law judge shall issue an order granting the relief sought.

26 (6) When the moving party is the administrator and no objections and
27 request for hearing have been served within 30 days, the administrator may
28 enter an order granting the relief sought.

29 (7) A motion for modification made under this section does not stay the
30 administrator from enforcing and collecting upon the existing order unless
31 so ordered by the court in which the order is entered.

1 (8) An administrative order filed in accordance with ORS 416.440 is a final
2 judgment as to any installment or payment of money that has accrued up to
3 the time the nonrequesting party is served with a motion to set aside, alter
4 or modify the judgment. The administrator may not set aside, alter or
5 modify any portion of the judgment that provides for any payment of money
6 for minor children that has accrued before the motion is served. However:

7 (a) The administrator may allow a credit against child support arrearages
8 for periods of time, excluding reasonable parenting time unless otherwise
9 provided by order or judgment, during which the obligor, with the knowledge
10 and consent of the obligee or pursuant to court order, has physical custody
11 of the child; and

12 (b) The administrator may allow a credit against child support arrearages
13 for any Social Security or veterans' benefits paid retroactively to the child,
14 or to a representative payee administering the funds for the child's use and
15 benefit, as a result of a parent's disability or retirement.

16 (9) The party requesting modification has the burden of showing a sub-
17 stantial change of circumstances or that a modification is appropriate under
18 the provisions of ORS 25.287.

19 (10) An administrative order modifying a court order is not effective until
20 the administrative order is reviewed and approved by the court that entered
21 the court order. The court shall make a written finding on the record that
22 the administrative order complies with the formula established by ORS
23 chapter 25. The court may approve the administrative order at any time after
24 the order is issued. If upon review the court finds that the administrative
25 order should not be approved, the court shall set the matter for hearing de
26 novo.

27 (11) The obligee is a party to all proceedings under this section.

28 (12) An order entered under this section that modifies a support order
29 because of the incarceration of the obligor is effective only during the period
30 of the obligor's incarceration and for 60 days after the obligor's release from
31 incarceration. The previous support order is reinstated by operation of law

1 on the 61st day after the obligor's release from incarceration. An order that
2 modifies a support order because of the obligor's incarceration must contain
3 a notice that the previous order will be reinstated on the 61st day after the
4 obligor's release from incarceration.

5 (13)(a) Notwithstanding subsections (1) to (12) of this section, any time
6 support enforcement services are being provided under ORS 25.080, upon re-
7 quest of a party to a support order or judgment or on the administrator's
8 own motion, the administrator may move to suspend the order or judgment
9 and issue a temporary modification order under this subsection when:

10 (A) There is a period of significant unemployment as that term is de-
11 scribed in paragraph (b) of this subsection; and

12 (B) A party to the support order or judgment experiences an
13 employment-related change of income as defined by rule in ORS 416.455.

14 (b) Proceedings under this subsection may be initiated only when there
15 is a period of significant unemployment in Oregon. The Attorney General
16 shall determine when a "period of significant unemployment" exists in
17 Oregon and designate the beginning and ending dates thereof. In making the
18 determination of when a period of significant unemployment exists in
19 Oregon, the Attorney General may consider whether there is in effect an
20 "extended benefit period" as that term is defined in ORS 657.321.

21 (c) Except as otherwise provided in this subsection, the provisions of
22 subsections (1) to (12) of this section apply to a motion for an order of sus-
23 pension and temporary modification under this subsection.

24 (d) A party's employment-related change of income during a period of
25 significant unemployment is considered a substantial change of circum-
26 stances for purposes of proceedings brought under this section.

27 (e) The motion for an order of suspension and temporary modification
28 must be in writing and must include, but need not be limited to:

29 (A) The amount of the existing support order or judgment;

30 (B) The amount of the obligor's and obligee's income immediately pre-
31 ceding the party's employment-related change of income, if known;

1 (C) The reason for the party's employment-related change of income;

2 (D) How the party's employment-related change of income affects the
3 party's employment status, income and, if applicable, ability to pay support;

4 (E) The obligor's and the obligee's current sources of income, if known;

5 (F) The proposed amount of the temporary modification order;

6 (G) A statement that if a party objects to the motion for an order of
7 suspension and temporary modification, then the party may request a hearing
8 within 14 days of service of the motion as provided in paragraph (g) of this
9 subsection;

10 (H) A statement that the preexisting support order or judgment will be
11 reinstated as provided in paragraph (h) of this subsection; and

12 (I) A statement that a party may request a renewal of the order of sus-
13 pension and temporary modification prior to its expiration as provided in
14 paragraph (j) of this subsection.

15 (f) The administrator shall serve the motion filed under this subsection
16 upon the parties by regular first class mail, facsimile or electronic mail un-
17 less a party signs a form agreeing to accept service of the motion.

18 (g) A party may request a hearing within 14 days of service of the motion.
19 If a hearing is requested, the provisions of ORS 416.427 apply. When there
20 has been no request for hearing, the administrator may enter an order of
21 suspension and temporary modification under this subsection. The order must
22 be consistent with the provisions of the motion filed under this subsection
23 and be in substantial compliance with the formula established under ORS
24 25.275.

25 (h) An order of suspension and temporary modification issued under this
26 subsection is temporary and remains in effect for six months from the date
27 the order is filed under ORS 416.440 or until the date specified in the notice
28 provided under paragraph (i) of this subsection informing of the party's re-
29 employment, whichever is earlier, at which time the preexisting support or-
30 der or judgment becomes immediately effective and payable on the first day
31 of the following month unless an order of renewal is issued under paragraph

1 (j) of this subsection.

2 (i) The administrator may issue a notice of reinstatement at any time
3 during which an order of suspension and temporary modification is in effect
4 under this subsection when a party obtains employment and receives income
5 that is sufficient to reinstate support in an amount substantially similar to
6 the amount in the preexisting support order or judgment. The notice shall
7 be served as provided in paragraph (f) of this subsection and must state that,
8 unless a request for hearing is received within 14 days of service of the no-
9 tice, the administrator will enter an order terminating the order of suspen-
10 sion and temporary modification and reinstating the amount of the
11 preexisting support order or judgment effective on a date to be specified in
12 the notice. If a hearing is requested, the provisions of ORS 416.427 apply.
13 When there is no request for hearing, the administrator may enter an order
14 terminating the order of suspension and temporary modification and rein-
15 stating the preexisting support order or judgment effective upon the date
16 specified in the notice.

17 (j) Prior to expiration of an order of suspension and temporary modifica-
18 tion under this subsection and upon request of a party, the administrator
19 may renew the order of suspension and temporary modification for additional
20 six-month periods or until the party obtains employment as described in
21 paragraph (i) of this subsection, whichever occurs first, if the circumstances
22 under which the order was originally issued continue to exist unchanged.

23 **SECTION 2.** ORS 25.378 is amended to read:

24 25.378. (1) Except as otherwise provided in ORS 25.396, when a support
25 order is entered or modified by the Division of Child Support, a district at-
26 torney, an administrative law judge or a circuit court, including a juvenile
27 court, the order shall include a provision requiring the obligor to pay sup-
28 port by income withholding regardless of whether support enforcement ser-
29 vices are being provided under ORS 25.080. In addition to the income
30 withholding provided for in this subsection, income withholding may be ini-
31 tiated in accordance with subsections (2) to (6) of this section.

1 (2) When an obligor is subject to a support order issued or registered in
2 this state and fails to make payments at least equal to the amount of support
3 payable for one month, a court or the administrator, whichever is appropri-
4 ate, shall initiate income withholding without the need for a judicial or ad-
5 ministrative hearing and without the need for advance notice to the obligor
6 of the withholding.

7 (3) When an arrearage exists and notice of the delinquent amount has
8 been given to the obligor, a court, upon application, shall issue a withhold-
9 ing order upon the ex parte request of a person holding support rights or the
10 administrator.

11 (4) If an obligor is not otherwise subject to income withholding a court
12 or the administrator may issue an order to withhold upon the ex parte mo-
13 tion of the obligor.

14 (5)[(a)] Upon the request of the holder of support rights, a court or the
15 administrator, as appropriate, may issue a withholding order at any time if:

16 [(A)] (a) The obligor is not otherwise subject to withholding; and

17 [(B)] (b) After notice and an opportunity to object has been given to the
18 obligor, a finding is made that it would be in the best interests of the child
19 to issue a withholding order.

20 [(b) *If the obligor has been granted an exception to withholding under ORS*
21 *25.396 by a court, the holder of support rights must apply for withholding*
22 *under this subsection by motion to the court.*]

23 (6) A court or the administrator shall issue an order to withhold when a
24 support order or an arrearage from another jurisdiction is entered in Oregon
25 in accordance with interstate income withholding under ORS chapter 110.

26 **SECTION 3.** ORS 25.759 is amended to read:

27 25.759. Upon identification of a person subject to suspension under ORS
28 25.750 to 25.783, the administrator may issue a notice, sent by regular mail
29 to both the address of record as shown in the records of the issuing entity
30 and the address of record as shown on the administrator's child support file.
31 Such notice shall contain the following information:

1 (1) That certain licenses, certificates, permits and registrations, which
2 shall be specified in the notice, are subject to suspension as provided for by
3 ORS 25.750 to 25.783.

4 (2) The name, final four digits of the Social Security number, if available,
5 [date] **year** of birth, if known, and child support case number or numbers of
6 the person subject to the action.

7 (3) The amount of arrears and the amount of the monthly child support
8 obligation, if any, or, if suspension is based on ORS 25.750 (1)(b), a de-
9 scription of the subpoena or other procedural order with which the person
10 subject to the action has failed to comply.

11 (4) The procedures available for contesting the suspension of a license,
12 certificate, permit or registration.

13 (5) That the only bases for contesting the suspension are:

14 (a) That the arrears are not greater than three months of support or
15 \$2,500;

16 (b) That there is a mistake in the identity of the obligor;

17 (c) That the person subject to the suspension has complied with the
18 subpoena or other procedural order identified in subsection (3) of this sec-
19 tion; or

20 (d) That the person subject to the suspension is in compliance with a
21 previous agreement as provided for by ORS 25.750 to 25.783.

22 (6) That the obligor may enter into an agreement, prescribed by rule by
23 the Department of Justice, compliance with which shall preclude the sus-
24 pension under ORS 25.750 to 25.783.

25 (7) That the obligor has 30 days from the date of the notice to contact the
26 administrator in order to:

27 (a) Contest the action in writing on a form prescribed by the adminis-
28 trator;

29 (b) Comply with the subpoena or procedural order identified in subsection
30 (3) of this section; or

31 (c) Enter into an agreement authorized by ORS 25.750 and 25.762. The

1 notice shall state that any agreement must be in writing and must be entered
2 into within 30 days of making contact with the administrator.

3 (8) That failure to contact the administrator within 30 days of the date
4 of the notice shall result in notification to the issuing entity to suspend the
5 license, certificate, permit or registration.

6 **SECTION 4.** ORS 25.790 is amended to read:

7 25.790. (1)(a) An employer shall report to the Division of Child Support
8 of the Department of Justice the hiring or rehiring of an individual who re-
9 sides or works in the state and to whom the employer anticipates paying
10 earnings if the employer:

11 (A) Has employees working only in this state; or

12 (B) Is a multistate employer and has designated to the United States
13 Secretary of Health and Human Services that Oregon is the employer's re-
14 porting state.

15 (b) The employer shall submit the report by mail or other means in ac-
16 cordance with rules adopted by the Department of Justice.

17 (2)(a) An employer shall make the report required by subsection (1) of this
18 section with respect to an employee:

19 (A) Not later than 20 days after the date the employer hires or rehires
20 the employee; or

21 (B) In the case of an employer transmitting reports magnetically or elec-
22 tronically, by transmissions each month not less than 12 days nor more than
23 16 days apart.

24 (b) An employer may submit a cumulative report for all individuals hired
25 or rehired during the previous reporting period.

26 (3) The report required under subsection (1) of this section may be made
27 on a W-4 form or, at the option of the employer, an equivalent form approved
28 by the Division of Child Support of the Department of Justice, but must
29 contain the employer's name, address and federal tax identification number
30 and the employee's name, address and Social Security number.

31 (4) As used in this section:

1 (a) "Employee" means an individual who must file a federal withholding
2 form W-4 under the Internal Revenue Code.

3 (b) "Rehire" means to re-employ any individual who was laid off, sepa-
4 rated, furloughed, granted a leave without pay or terminated from employ-
5 ment for more than [45] **60** days.

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