

Ms. Leah Feldon
Director
Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland OR 97232

May 12, 2023

Via email: Leah.Feldon@deq.oregon.gov

Dear Director Feldon:

The undersigned members of the Oregon Legislative Assembly are concerned with the direction of the Department of Environmental Quality's Employee Commute Options (ECO) rulemaking. We are alarmed by many of the proposed changes to the ECO program and urge you to pause this rulemaking immediately, thoroughly consider the impacts on affected employers and significantly pare down or abandon updates to this regulatory program.

We support employers encouraging employees to utilize public transit and carpools to reduce congestion, commuting costs and emissions. However, as drafted, the rule imposes massive regulatory complexity and cost burdens on employers for commute options that are unreasonable and impracticable for many employers and their employees.

On whole, the draft rule is overly prescriptive, Portland-centric in its approach ignoring the challenges employers in smaller communities face, requires employers to implement extremely costly measures to comply and fails to recognize broader issues and systemic problems that would make it very challenging for employers to comply with the draft rules. Many of these issues have been raised by members of the rulemaking advisory committee (RAC) process and have been ignored by DEQ staff.

The draft rule would require Portland area employers to reduce employee commuting by 20% (up from 10% in the current rule) for employers with more than 100 employees at a worksite. The rulemaking also expands the regulation statewide and makes employers located within urban growth boundaries (UGB) with populations greater than 50,000 subject to the program. Employers in these communities with more than 100 employees at a worksite must reduce drive alone commuting by 15%.

Some of the most concerning provisions in the draft include:

- A requirement that employers must employ or contract with a person for whom the ECO program is their “*primary* professional responsibility.”
- Adding required, invasive questions to the employee survey including the roundtrip length of an employee’s commute, how many others are in their carpool or vanpool and the reason for their decision to commute alone or utilize a commute option.
- Requiring employers to revise their commute reduction plans and add more commute options if they fail to achieve their trip reduction target.
- The inclusion of high-cost commute options such as providing vanpools for employees without proximity to public transit, providing onsite or nearby childcare, paying carpoolers and employees utilizing active transportation options a daily stipend.
- The high commute reduction targets.
- The requirement that a commute reduction plan must be revised (and more commute options added) in two consecutive compliance cycles if the employer fails to meet the trip reduction target.
- Very limited circumstances in which employers could be exempted.

The draft rule fails to recognize or address broader issues and systemic challenges to reducing employee commuting such as:

- Employers are all different and have different workforces and business models. As drafted, the rule simply does not work for some types of employers, and they would be forced to utilize very high-cost options like vanpools to reduce employee commuting.
- Employees do not feel safe on public transit and have little interest in taking transit right now. Safety concerns are well documented and certain demographics such as women and people of color feel especially vulnerable on public transit.
- Transit schedules have been significantly reduced due to lower ridership resulting from the pandemic as well as the workforce challenges public transit agencies are experiencing. Challenges large transit agencies like TriMet are experiencing are magnified significantly in smaller cities.
- Telecommuting is one of the few low-cost options available, yet employers are trying to get employees back to worksites post-pandemic and the way the program is structured would penalize employers for bringing employees back to work.
- Transit agencies like TriMet have refused to negotiate anything less than a 5-day per week transit pass rate (e.g., a 3-day per week pass price) with employers that have a substantial portion of their workforce telecommuting.
- DEQ has very limited capacity to provide technical support to employers making this program one more heavy-handed regulatory program for employers to comply with.

Employers, and especially private employers, have borne tremendous burdens over the last few years. Keeping employees safe during the pandemic, inflation and increases in the cost of goods and services, higher taxes (including new transit taxes) and employment costs, operating with a significant remote workforce and many others have made running businesses much more expensive.

The proposals in the current draft are unreasonable and impracticable, particularly for employers in smaller communities. It is simply not the time to add costs and regulatory burdens for employers.

We request that DEQ suspend this rulemaking and engage employers in a more thoughtful discussion about what is realistic and reasonable and determine a better path forward that does not force excessive regulatory requirements and costs on employers.

Sincerely,



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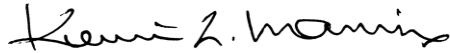
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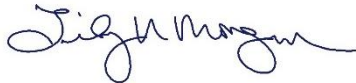
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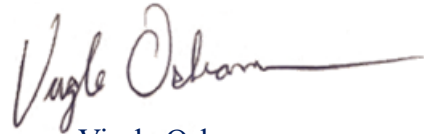
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