

# House Bill 3397

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits employers from discriminating in compensation against part-time employees and employees in contingent jobs. Provides exception.

Prohibits person from entering into contract for labor or services with certain contractors when person knows or should know that contract does not include sufficient funds to allow contractor to comply with laws governing labor or services to be provided. Creates cause of action.

Regulates entity that procures employment for others as employment agency when entity's services are paid for by anyone other than job applicant. Increases amount of bond or other security employment agency must maintain. Prohibits employment agencies from charging applicants for certain items or services. Prohibits employment agencies from taking certain actions against applicants. Creates cause of action for violations by employment agency.

## A BILL FOR AN ACT

1  
2 Relating to working conditions of contingent workers; creating new provisions; and amending ORS  
3 658.005, 658.075 and 658.172.

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

5 **SECTION 1. (1) As used in this section, unless the context clearly requires otherwise:**

6 (a) **"Benefits" includes, but is not limited to, accrual of seniority, credit for length of**  
7 **service, holidays, vacations, sick leaves and other leave, disability and health insurance,**  
8 **health and welfare and pension benefits.**

9 (b) **"Casual employment" means work scheduled on an occasional or intermittent basis,**  
10 **without a regular schedule.**

11 (c) **"Client" means a person that receives services or functions from another person.**

12 (d) **"Client employer" means a client that is an employer or joint employer.**

13 (e) **"Client work site" means a place of work owned, operated or controlled by a client**  
14 **employer.**

15 (f) **"Contingent job" means a job in which an individual does not have an explicit or im-**  
16 **PLICIT contract for long-term, full-time employment, including casual employment, contractor**  
17 **employment, day labor employment, home-based employment, leased employment, on-call**  
18 **employment, seasonal employment, temporary agency employment or temporary direct-hire**  
19 **employment.**

20 (g) **"Contractor employment" means employment in which a worker is employed by a**  
21 **person that has contracted with a client to provide services to the client.**

22 (h) **"Cost of health benefits" means the total cost of health insurance premiums and**  
23 **out-of-pocket health care expenses.**

24 (i) **"Day labor employment" means employment in which a worker is hired for a day or**  
25 **on a day-to-day basis to perform an unskilled or semiskilled task.**

26 (j) **"Employer" includes an individual, organization, partnership, association, trust, es-**  
27 **tate, joint stock company, insurance company or corporation, whether domestic or foreign,**

**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 receiver or trustee in bankruptcy, the legal representative of a deceased person or a public  
2 body, as defined in ORS 174.109, that employs one or more individuals during any day or  
3 portion of any day.

4 (k) "Full-time employment" means a job with regularly scheduled work of more than 32  
5 hours per week or more than 64 hours in a two-week period.

6 (L) "Home-based employment" means employment in which an individual produces goods  
7 or delivers services in or about a home, apartment, tenement or room in a residential es-  
8 tablishment for an employer that suffers or permits the production or service delivery, re-  
9 gardless of the source, whether obtained from an employer or elsewhere, of the materials  
10 used by the individual in the production.

11 (m) "Joint employer" includes a contractor and a client that are in a relationship in  
12 which the employees of the contractor perform work that is an integral component of the  
13 client's enterprise and in which one or more of the following exists:

14 (A) The contractor's employees are required to follow the client's instructions concern-  
15 ing the specifics of how and when the services are to be performed;

16 (B) The contractor's employees perform the services on a regular basis on premises  
17 owned or managed by the client; or

18 (C) The capital goods used by the contractor's employees in performing the services in  
19 question are provided, or substantially financed, directly or indirectly by the client.

20 (n) "Leased employment" means employment in which an individual performs services for  
21 a client through a leasing organization pursuant to an agreement between the client and the  
22 leasing organization.

23 (o) "On-call employment" means employment in which a worker reports to work only  
24 when asked by the worker's employer to do so and the worker does not have a regular  
25 schedule.

26 (p) "Part-time employment" means regularly scheduled work that is less than the full-  
27 time work schedule customary for the individual's occupation.

28 (q) "Seasonal employment" means employment that regularly provides no work for at  
29 least 90 days during a year.

30 (r) "Temporary agency employment" means work performed by a person who is hired and  
31 remunerated by an agency that provides the worker to a client, where there is no implicit  
32 or explicit contract for long-term employment.

33 (s) "Temporary direct-hire employment" means work performed by an individual who is  
34 hired and remunerated by the person for whom the individual provides services, where there  
35 is no implicit or explicit contract for long-term employment or there is an established em-  
36 ployment period of one year or less.

37 (2) An employer, including joint employers of employees at a client work site, may not  
38 discriminate in any way in the compensation paid as between full-time employees and part-  
39 time employees, whether or not the employees are employed in permanent or contingent  
40 jobs, or between employees employed in permanent jobs and employees employed in contin-  
41 gent jobs. However, variations in compensation are not prohibited when the variations are  
42 based on differences in job duties.

43 (3) For the purpose of determining the compensation paid to full-time employees that  
44 will be used to determine whether the employer is discriminating against contingent workers  
45 or part-time workers, full-time compensation is deemed to be the gross hourly wages of

1 similarly situated full-time employees, plus a 30 percent surcharge. The surcharge is deemed  
 2 to be paid to the contingent employee or part-time employee if the surcharge is included di-  
 3 rectly in wages or is offered as part of the cost of health, welfare and retirement benefits.

4 (4) Nothing in this section may be construed to diminish or otherwise affect the re-  
 5 quirements, guarantees or protections under any bargaining agreement, company policy or  
 6 state or federal law that provides for greater or additional benefits than those required under  
 7 this section.

8 **SECTION 2.** Any individual aggrieved by a violation of section 1 of this 2007 Act may,  
 9 within three years of the alleged violation, institute and prosecute in the individual's own  
 10 name and on the individual's own behalf, or for the individual and for others similarly situ-  
 11 ated, a civil action for injunctive relief and any damages incurred, including treble damages  
 12 for any loss of wages and other benefits. If the aggrieved individual prevails, the court shall  
 13 award the individual reasonable attorney fees and costs.

14 **SECTION 3.** (1) As used in this section:

15 (a) "Contingent job" has the meaning given that term in section 1 of this 2007 Act.

16 (b) "Knows" includes the knowledge, arising from familiarity with the normal facts and  
 17 circumstances of the business activity engaged in, that a contract or agreement does not  
 18 include funds sufficient to allow the contractor to comply with applicable laws.

19 (c) "Should know" includes the knowledge of any additional facts or information that  
 20 would make a reasonably prudent person inquire whether a contract or agreement contains  
 21 sufficient funds to allow the contractor to comply with applicable laws.

22 (2)(a) A person may not enter into a contract or agreement with a construction, farm  
 23 labor, janitorial or security guard contractor for labor or services provided by workers in  
 24 contingent jobs if the person knows or should know that the contract or agreement does not  
 25 include funds sufficient to allow the contractor to comply with all applicable local, state and  
 26 federal laws, rules or regulations governing the labor or services to be provided.

27 (b) The person shall request any information from the contractor that is reasonably  
 28 necessary to determine whether the contract or agreement between the person and the  
 29 contractor includes funds sufficient to allow the contractor to comply with applicable local,  
 30 state and federal laws, rules or regulations governing the labor or services to be provided  
 31 under the contract or agreement. A person is presumed to know the information described  
 32 in this section, and a failure to request the information from the contractor is no defense.

33 (3) Subsection (2) of this section does not apply to:

34 (a) A person that executes a collective bargaining agreement covering the workers em-  
 35 ployed under the contract or agreement; or

36 (b) A person that enters into a contract or agreement for labor or services to be per-  
 37 formed on the person's home residence if a family member of the person resides for at least  
 38 a part of the year in the residence.

39 (4)(a) A worker aggrieved by a violation of subsection (2) of this section may file a civil  
 40 action for damages to recover the greater of the worker's actual damages or \$250 per worker  
 41 per violation for an initial violation or \$1,000 per worker for each subsequent violation. If the  
 42 aggrieved worker prevails, the court shall award the worker reasonable attorney fees and  
 43 costs. An action under this section may not be maintained unless the worker pleads and  
 44 proves that the worker was damaged as a result of a violation of an applicable local, state  
 45 and federal law, rule or regulation governing the labor or services provided under the con-

1 **tract or agreement.**

2 **(b) A worker aggrieved by a violation of subsection (2) may also bring an action for**  
 3 **injunctive relief and, upon prevailing, may recover reasonable attorney fees and costs.**

4 **(c) A person who has violated subsection (2) of this section is jointly and severally liable**  
 5 **with the contractor to any worker of the contractor who is aggrieved by the contractor's**  
 6 **violation.**

7 **SECTION 4.** ORS 658.005 is amended to read:

8 658.005. As used in ORS 658.005 to 658.245, unless the context requires otherwise:

9 (1) "Applicant for employment" or "applicant" means an individual who is seeking or who has  
 10 obtained employment through the services of an employment agency.

11 (2) "Charge for services" means any money or other consideration paid or promised to be paid  
 12 by an applicant for employment **or by an employer** for services rendered by an employment agency.

13 (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

14 (4)(a) "Employment agency" or "agency" [*means*] **includes** a business, service, bureau or club  
 15 operated by a person, firm, organization, limited liability company or corporation engaged in pro-  
 16 curing for a fee[,] employment for others and employees for employers.

17 (b) "Employment agency" or "agency" does not include:

18 (A) A nursing school, business school or career school that does not charge a fee for placement.

19 (B) [*Any*] **A** business, person, service, bureau, organization or club that by advertisement or  
 20 otherwise offers as its main object or purpose to counsel, teach or prepare individuals to obtain  
 21 employment, and [*which*] **that** charges for its services, whether in the form of dues, tuition, mem-  
 22 bership fees, registration fees or any other valuable service.

23 [*(C) Any business, service, bureau or club operated by a person engaged in procuring employment*  
 24 *for others when the charges for services are paid, directly or indirectly, by anyone other than the ap-*  
 25 *plicant for employment.*]

26 [*(D)*] (C) An employment listing service, as defined in ORS 658.250.

27 **SECTION 5.** ORS 658.075 is amended to read:

28 658.075. (1) Each employment agency shall maintain a corporate surety bond or irrevocable let-  
 29 ter of credit issued by an insured institution as defined in ORS 706.008 of [*\$5,000*] **\$20,000**, payable  
 30 to the people of the State of Oregon, conditioned that the employment agency will comply with ORS  
 31 658.005 to 658.245 and will pay:

32 (a) All sums legally owing to any person when the employment agency or its agents have re-  
 33 ceived such sums;

34 (b) All damages occasioned to any person by reason of any willful misrepresentation, fraud,  
 35 deceit or other unlawful act or omission by the employment agency, or its agents or employees  
 36 acting within the scope of their employment; and

37 (c) All sums legally owing to any employee of the employment agency.

38 (2) For the purposes of this section, each general partner shall furnish the required bond or  
 39 letter of credit. When an employment agency is operated by a limited liability company or corpo-  
 40 ration, the bond or letter of credit shall be in the name of the limited liability company or corpo-  
 41 ration.

42 **SECTION 6.** ORS 658.172 is amended to read:

43 658.172. (1) Any job referrals between an employment agency and an applicant for whom [*such*]  
 44 **the** agency is to procure employment and from whom a charge for services is to be exacted or at-  
 45 tempted to be collected shall be in writing. The employment agency shall give the applicant a copy

1 of the job referral document.

2 (2) The job referral document, which shall be assigned the same number as the receipt of the job  
3 order by the agency, shall include:

4 (a) The name, address and telephone number of the employment agency.

5 (b) The date of issuing the job referral document.

6 (c) The name of the applicant, the name and address of the person to whom the applicant is sent  
7 for interview and the address where the applicant is to report for employment.

8 (d) The approximate amount of fee to be charged and to be collected from the applicant, if the  
9 applicant accepts employment, and a statement *[that]* **as to whether** the employer is *[not]* responsi-  
10 ble for paying the fee.

11 (e) The kind of work or employment.

12 (f) The daily hours of work and the approximate wages or salary, including any consideration  
13 of privilege.

14 **(g) The projected duration of the job assignment.**

15 *[(g)]* **(h)** If any labor trouble exists at the place of employment, a statement of that fact.

16 (3) The job referral document shall be signed by a representative of the employment agency, and  
17 shall be delivered to the applicant or sent by United States mail to the applicant.

18 (4) *[No fee or charge shall be required or accepted]* **The employment agency may not require**  
19 **or accept a fee or charge** from an applicant for employment when the employment agency fails to  
20 comply with the provisions of subsection (3) of this section.

21 **(5) The job referral document shall be written in English and any other language that is**  
22 **generally used in the locale of the employment agency.**

23 **SECTION 7. (1) An employment agency may not, directly or indirectly, charge for any**  
24 **special attire, accessories, tools, safety equipment or other item required by law or custom**  
25 **to perform the work assignment. For any other attire, accessories, tools, safety equipment**  
26 **or item the employment agency makes available for purchase, the employment agency may**  
27 **not charge the applicant more than the actual cost or reasonable market value, whichever**  
28 **is less, for the item.**

29 **(2) An employment agency may not:**

30 **(a) Charge an applicant for transportation to and from the work site or between work**  
31 **sites; or**

32 **(b) Directly or indirectly charge an applicant for cashing a paycheck.**

33 **(3) An employment agency may not restrict the right of an applicant to accept permanent**  
34 **employment with a third party employer to whom the applicant has been referred for tem-**  
35 **porary work or restrict the right of a third party employer to offer permanent employment**  
36 **to the applicant. The employment agency may not charge an applicant a fee or fine for ac-**  
37 **cepting an offer of permanent employment from a third party employer or charge a third**  
38 **party employer additional amounts for offering permanent employment to an applicant, ex-**  
39 **cept as otherwise provided in ORS 658.005 to 658.245.**

40 **(4) If an employment agency pays wages to an applicant, the agency shall, at the time**  
41 **wages are paid, provide the applicant a written statement itemizing the applicant's total**  
42 **wages, the basis of the calculation of the wages and the amount and purpose of each de-**  
43 **duction made from the wages.**

44 **SECTION 8. Any applicant aggrieved by a violation of ORS 658.005 to 658.245, or any rule**  
45 **adopted under ORS 658.005 to 658.245, by an employment agency may file a civil action in**

1 circuit court. The filing of a complaint with the Commissioner of the Bureau of Labor and  
2 Industries is not a condition precedent to the filing of a civil action. The civil action must  
3 be brought within three years after the date of the final referral of an applicant who is a  
4 party to the action by the employment agency. An action may be brought by one or more  
5 applicants for and on behalf of themselves and other applicants similarly situated. Any ap-  
6 plicant whose rights under ORS 658.005 to 658.245 have been violated is entitled to collect:

7 (1) Compensatory damages or an amount of \$500 for each violation, whichever is greater;

8 (2) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate;  
9 and

10 (3) Attorney fees and costs.

11 **SECTION 9.** Any agreement between an applicant and an employment agency to waive  
12 rights and responsibilities under ORS 658.005 to 658.245 or any rule adopted under ORS  
13 658.005 to 658.245 is void and unenforceable as violative of public policy.

14 **SECTION 10.** When an employment agency has not complied with a notification or record  
15 keeping provision required under ORS 658.005 to 658.245 or any rule adopted under ORS  
16 658.005 to 658.245, there is a rebuttable presumption that any reasonable factual presentation  
17 by the applicant is accurate. The presumption may be rebutted only by clear and convincing  
18 evidence.

19 **SECTION 11.** An employment agency may not retaliate against an applicant seeking to  
20 enforce the applicant's rights under ORS 658.005 to 658.245 or any rule adopted under ORS  
21 658.005 to 658.245. Protected activities include, but are not limited to:

22 (1) Making a complaint to the employment agency;

23 (2) Conferring with a state or federal agency, an attorney or a community organization  
24 concerning rights granted an applicant under ORS 658.005 to 658.245;

25 (3) Making a public complaint to a coworker, or before a public hearing or the press, that  
26 rights granted under ORS 658.005 to 658.245 or any rule adopted under ORS 658.005 to 658.245  
27 have been violated;

28 (4) Causing to be instituted any proceeding under or related to ORS 658.005 to 658.245;  
29 and

30 (5) Testifying or preparing to testify in an investigation or proceeding under ORS 658.005  
31 to 658.245.

32 **SECTION 12.** Sections 7 to 11 of this 2007 Act are added to and made a part of ORS  
33 658.005 to 658.245.

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