

**A-Engrossed**  
**House Bill 2040**

Ordered by the House March 22  
Including House Amendments dated March 22

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

**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.

**Removes firefighters from and adds boiler operators to types of employees exempt from provision limiting maximum working hours for certain industries.**

**Requires inclusion of certain information in written notice of nonpayment.**

*[Requires that unpaid wages requested by employee to be mailed to employee after discharge or termination must be mailed by certified mail.]* Modifies length of time unclaimed wages collected by Bureau of Labor and Industries must be held before wages are forfeited to state. Makes certain legal summaries available to employers from website of bureau or from bureau upon request.

**A BILL FOR AN ACT**

Relating to the regulation of employment; amending ORS 652.020, 652.150, 652.405 and 653.050.

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

**SECTION 1.** ORS 652.020 is amended to read:

652.020. (1) No person shall be employed in any mill, factory or manufacturing establishment in this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and logging camps more than eight hours, exclusive of one hour, more or less, in one day or more than 48 hours in one calendar week, except logging train crews, guards, *[firefighters]* **boiler operators** and persons engaged in the transportation to and from work, and employees when engaged in making necessary repairs, or in the case of emergency where life and property are in imminent danger. However, employees may work overtime not to exceed three hours in one day, conditioned that payment be made for said overtime at the rate of time and one-half the regular wage.

(2) No employer shall require or permit any person to work in any place mentioned in this section more than the hours provided for in this section during any day of 24 hours. No employer shall permit or suffer an overseer, superintendent or other agent of the employer to violate this section.

(3) This section does not apply to persons employed in the care of quarters or livestock, conducting messhalls, superintendence and direction of work, or to the loading and removal of the finished forest product.

(4) Subsections (1) and (2) of this section do not apply to employees who are represented by a labor organization for purposes of collective bargaining with their employer, provided limits on the required hours of work and overtime payment have been agreed to between the employer and labor organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and payments shall not be deemed to be changed from the previous collective bargaining agreement between the employer and labor organization unless the employees have been locked out, are engaged

**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 in a strike or the employer has unilaterally implemented new terms and conditions of employment.

2 **SECTION 2.** ORS 652.150 is amended to read:

3 652.150. (1) Except as provided in subsections (2) and (3) of this section, if an employer willfully  
4 fails to pay any wages or compensation of any employee whose employment ceases, as provided in  
5 ORS 652.140 and 652.145, then, as a penalty for the nonpayment, the wages or compensation of the  
6 employee shall continue from the due date thereof at the same hourly rate for eight hours per day  
7 until paid or until action therefor is commenced. However:

8 (a) In no case shall the penalty wages or compensation continue for more than 30 days from the  
9 due date; and

10 (b) A penalty may not be assessed under this section when an employer pays an employee the  
11 wages the employer estimates are due and payable under ORS 652.140 (2)(c) and the estimated  
12 amount of wages paid is less than the actual amount of earned and unpaid wages, as long as the  
13 employer pays the employee all wages earned and unpaid within five days after the employee sub-  
14 mits the time records.

15 (2)(a) If the employee or a person on behalf of the employee [*sends*] **submits** a written notice  
16 of nonpayment, the penalty may not exceed 100 percent of the employee's unpaid wages or com-  
17 pensation unless the employer fails to pay the full amount of the employee's unpaid wages or com-  
18 pensation within 12 days after receiving the [*written*] notice.

19 (b) If the employee or a person on behalf of the employee fails to [*send the*] **submit a** written  
20 notice **of nonpayment**, the penalty may not exceed 100 percent of the employee's unpaid wages or  
21 compensation.

22 (c) **A written notice of nonpayment must include the estimated amount of wages or**  
23 **compensation alleged to be owed or an allegation of facts sufficient to estimate the amount**  
24 **owed. Submission of a written notice of nonpayment that fails to include the estimated**  
25 **amount of wages or compensation alleged to be owed or an allegation of facts sufficient to**  
26 **estimate the amount owed does not satisfy the requirement for written notice under this**  
27 **subsection unless the employer has violated ORS 652.610, 652.640 or 653.045.**

28 (d) For purposes of determining when an employer has paid wages or compensation under this  
29 subsection, payment occurs on the date the employer delivers the payment to the employee or sends  
30 the payment by first class mail, express mail or courier service.

31 (3)(a) For purposes of this section, a commission owed to an employee by a business that pri-  
32 marily sells motor vehicles or farm implements is not due until all of the terms and conditions of  
33 an agreement between the employer and employee concerning the method of payment of commissions  
34 are fulfilled. If no such agreement exists, the commission is due with all other earned and unpaid  
35 wages or compensation as provided in ORS 652.140.

36 (b) Notwithstanding subsection (2) of this section, when there is a dispute between an employer  
37 and an employee concerning the amount of commission due under paragraph (a) of this subsection,  
38 if the amount of unpaid commission is found to be less than 20 percent of the amount of unpaid  
39 commission claimed by the employee, the penalty may not exceed the amount of the unpaid com-  
40 mission or \$200, whichever is greater.

41 (4) Subsections (2) and (3)(b) of this section do not apply when:

42 (a) The employer has violated ORS 652.140 or 652.145 one or more times in the year before the  
43 employee's employment ceased; or

44 (b) The employer terminated one or more other employees on the same date that the employee's  
45 employment ceased.

1 (5) The employer may avoid liability for the penalty described in this section by showing finan-  
2 cial inability to pay the wages or compensation at the time the wages or compensation accrued.

3 **SECTION 3.** ORS 652.405 is amended to read:

4 652.405. (1) The Commissioner of the Bureau of Labor and Industries shall attempt for a period  
5 of not less than [*seven*] **three** years to make payment of wages collected under ORS 652.310 to  
6 652.414 to the person entitled thereto.

7 (2) Wages collected by the commissioner under ORS 652.310 to 652.414 and remaining unclaimed  
8 for a period of more than [*seven*] **three** years from the date of collection shall, [*within 30 days after*  
9 *June*] **by July 30** of each year, be forfeited to the state and shall be paid by the commissioner to the  
10 Department of State Lands for the benefit of the Common School Fund of this state. The department  
11 shall issue a receipt for the money to the commissioner. The person entitled to the wages or the  
12 person's heirs or personal representatives may reclaim the wages paid into the Common School Fund  
13 pursuant to this section within the time and in the manner provided for estates which have  
14 escheated to the state.

15 **SECTION 4.** ORS 653.050 is amended to read:

16 653.050. Every employer required by ORS 653.025 or by any rules, orders or permit issued under  
17 ORS 653.030 or 653.261 to pay a minimum wage to any of the employer's employees shall keep  
18 summaries of ORS 653.010 to 653.261, summaries of all rules promulgated by the Commissioner of  
19 the Bureau of Labor and Industries pursuant to ORS 653.010 to 653.261 and summaries of all rules  
20 promulgated by the Wage and Hour Commission posted in a conspicuous and accessible place in or  
21 about the premises where [*such*] **the** employees are employed. Employers **may obtain the summa-**  
22 **ries from the website of the Bureau of Labor and Industries or upon request from the bu-**  
23 **reau, the first copy of which** shall be furnished [*copies of these summaries by the commissioner*]  
24 without charge. In addition, upon request, the [*commissioner*] **bureau** shall furnish the complete text  
25 of all rules promulgated pursuant to ORS 653.010 to 653.261 and by the Wage and Hour Commission  
26 to any employer without charge.

27