

Enrolled
House Bill 2040

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)

CHAPTER

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

SECTION 2. ORS 652.150 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 652.405 is amended to read:

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

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

SECTION 4. ORS 653.050 is amended to read:

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

Passed by House March 28, 2011

.....
Ramona Kenady Line, Chief Clerk of House

.....
Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Passed by Senate May 31, 2011

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

.....
Kate Brown, Secretary of State