

D R A F T

SUMMARY

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 and from taking certain actions against applicants.

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.

Requires employment agencies to register with Commissioner of Bureau of Labor and Industries. Requires employer to provide information about work, employer, wages and deductions and to provide certain special attire, accessories, tools or safety equipment to day laborers. Prohibits employers from retaliating or taking certain other actions against workers. Authorizes imposition of penalty for violation.

Requires commissioner to adopt rules to implement and enforce law. Authorizes commissioner to assess civil penalties and to deny, suspend or revoke registration of employment agency.

Creates cause of action for violations.

A BILL FOR AN ACT

1
2 Relating to regulation of employment; creating new provisions; and amending
3 ORS 658.005, 658.075 and 658.210.

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

5 **SECTION 1.** ORS 658.005 is amended to read:

6 658.005. As used in ORS 658.005 to 658.245, unless the context requires
7 otherwise:

8 (1) "Applicant for employment" or "applicant" means an individual who

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 is seeking or who has obtained employment through the services of an em-
2 ployment agency.

3 **(2) “Casual employment” means work scheduled on an occasional**
4 **or intermittent basis, without a regular schedule.**

5 [(2)] (3) “Charge for services” means any money or other consideration
6 paid or promised to be paid by an applicant for employment for services
7 rendered by an employment agency.

8 **(4) “Client” means a person that receives services or functions by**
9 **contract with an employment agency or other person.**

10 **(5) “Client employer” means a client that is an employer or joint**
11 **employer of workers provided, referred or facilitated by an employ-**
12 **ment agency.**

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

15 [(3)] (7) “Commissioner” means the Commissioner of the Bureau of Labor
16 and Industries.

17 **(8) “Contingent employment” means a job in which an individual**
18 **does not have an explicit or implicit contract for long-term, full-time**
19 **employment, including casual employment, contractor employment,**
20 **day labor, home-based employment, leased employment, on-call em-**
21 **ployment, part-time employment, seasonal employment, temporary**
22 **agency employment or temporary direct-hire employment.**

23 **(9) “Contractor employment” means employment in which a worker**
24 **is employed by a person that has contracted with a client to provide**
25 **services to the client.**

26 **(10) “Cost of health benefits” means the total cost of health insur-**
27 **ance premiums and out-of-pocket health care expenses.**

28 **(11) “Day labor” includes labor or employment that is occasional**
29 **or irregular, in which an individual is employed for not longer than**
30 **the period of time required to complete the assignment for which the**
31 **individual is hired, or that is for a period of one week or less. “Day**

1 **labor” does not include labor or employment of a professional nature.**

2 **(12) “Day labor employer” includes:**

3 **(a) Any person that directly or indirectly through an agent, day**
4 **labor service agency or other person acting in the day labor employer’s**
5 **interests, suffers or permits a day laborer to work or otherwise exer-**
6 **cises control over the wages, hours or working conditions of a day la-**
7 **borer;**

8 **(b) A day labor service agency; and**

9 **(c) A client employer of day laborers.**

10 **(13) “Day labor service agency” includes any person that recruits,**
11 **dispatches or otherwise facilitates the employment of day laborers for**
12 **a client. “Day labor service agency” does not include a nonprofit or-**
13 **ganization described in section 501(c)(3) of the Internal Revenue Code.**

14 **(14) “Day laborer” means an individual solicited or employed to**
15 **engage in day labor.**

16 **(15)(a) “Employ” includes to suffer or permit to work.**

17 **(b) “Employ” does not include:**

18 **(A) Voluntary or donated services performed for no compensation**
19 **or without expectation or contemplation of compensation for services**
20 **provided to a public body, as defined in ORS 174.109, or to a religious,**
21 **charitable, educational, public service or similar nonprofit corpo-**
22 **ration, organization or institution for community service, religious or**
23 **humanitarian reasons; and**

24 **(B) Services performed by general or public assistance recipients**
25 **as part of a work training program administered under state or federal**
26 **assistance laws.**

27 **(16) ‘Employee’ means an individual employed by an employer in**
28 **this state. An individual who performs services that are an integral**
29 **part of the business of another person for remuneration is presumed**
30 **to be an employee unless the individual who performs the services for**
31 **another person is customarily engaged in an independently established**

1 **business of the same nature as the business of the person for whom**
2 **the services are performed.**

3 **(17)(a) “Employer” means:**

4 **(A) Any person, including a public body as defined in ORS**
5 **174.109, that employs an individual and any other person acting directly**
6 **or indirectly in the interests of an employer in relation to an em-**
7 **ployee; and**

8 **(B) To the extent that an employer has not paid employees in full,**
9 **any successor to the business of the employer or a purchaser of the**
10 **employer’s property for the continuance of the same business.**

11 **(b) “Employer” does not include the United States Government.**

12 *[(4)(a)]* **(18)(a) “Employment agency” or “agency” means a business, ser-**
13 **vice, bureau or club operated by a person, firm, organization, limited liability**
14 **company or corporation engaged in procuring for a fee, employment for oth-**
15 **ers [and] or employees for employers.**

16 **(b) “Employment agency” or “agency” does not [include] mean:**

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

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

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

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

28 **(19) “Full-time employment” means a job with regularly scheduled**
29 **work of more than 32 hours per week or more than 64 hours in a**
30 **two-week period.**

31 **(20) “Home-based employment” means employment in which an in-**

1 **dividual produces goods or delivers services in or about a home,**
2 **apartment, tenement or room in a residential establishment for an**
3 **employer that suffers or permits the production or service delivery,**
4 **regardless of the source, whether obtained from an employer or else-**
5 **where, of the materials used by the individual in the production.**

6 **(21) “Joint employer” includes a contractor and a client that are in**
7 **a relationship in which the employees of the contractor perform work**
8 **that is an integral component of the client’s enterprise and in which**
9 **one or more of the following exists:**

10 **(a) The contractor’s employees are required to follow the client’s**
11 **instructions concerning the specifics of how and when the services are**
12 **to be performed;**

13 **(b) The contractor’s employees perform the services on a regular**
14 **basis on premises owned or managed by the client; or**

15 **(c) The capital goods used by the contractor’s employees in per-**
16 **forming the services in question are provided, or substantially fi-**
17 **nanced, directly or indirectly by the client.**

18 **(22) “Knows” includes the knowledge, arising from familiarity with**
19 **the normal facts and circumstances of the business activity engaged**
20 **in, that a contract or agreement does not include funds sufficient to**
21 **allow the contractor to comply with applicable laws.**

22 **(23) “Leased employment” means employment in which an individ-**
23 **ual performs services for a client through a leasing organization pur-**
24 **suant to an agreement between the client and the leasing**
25 **organization.**

26 **(24) “On-call employment” means employment in which a worker**
27 **reports to work only when asked by the worker’s employer to do so**
28 **and the worker does not have a regular schedule.**

29 **(25) “Part-time employment” means regularly scheduled work that**
30 **is less than the full-time work schedule customary for the individual’s**
31 **occupation.**

1 **(26) “Seasonal employment” means employment that regularly pro-**
2 **vides no work for at least 90 days during a year.**

3 **(27) “Should know” includes the knowledge of any additional facts**
4 **or information that would make a reasonably prudent person inquire**
5 **as to whether a contract or agreement contains sufficient funds to**
6 **allow the contractor to comply with applicable laws.**

7 **(28) “Temporary agency employment” means work performed by an**
8 **individual who is hired and remunerated by an employment agency**
9 **that provides the individual to a client, where there is no implicit or**
10 **explicit contract for long-term employment.**

11 **(29) “Temporary direct-hire employment” means work performed**
12 **by an individual who is hired and remunerated by the person for whom**
13 **the individual provides services, where there is no implicit or explicit**
14 **contract for long-term employment or there is an established employ-**
15 **ment period of one year or less.**

16 **(30) “Wages” means all compensation for performance of service by**
17 **an employee for an employer, including penalty wages owed under**
18 **ORS 652.150, whether paid by the employer or another person, payable**
19 **in legal tender of the United States or check on banks convertible into**
20 **cash on demand at full face value, subject to deductions, charges or**
21 **allowances permitted in ORS 653.035.**

22 **SECTION 2.** ORS 658.075 is amended to read:

23 658.075. (1) Each employment agency shall maintain a corporate surety
24 bond or irrevocable letter of credit issued by an insured institution as de-
25 fined in ORS 706.008 of [~~\$5,000~~] **\$20,000**, payable to the people of the State
26 of Oregon, conditioned that the employment agency will comply with ORS
27 658.005 to 658.245 and will pay:

28 (a) All sums legally owing to any person when the employment agency
29 or its agents have received such sums;

30 (b) All damages occasioned to any person by reason of any willful mis-
31 representation, fraud, deceit or other unlawful act or omission by the em-

1 ployment agency, or its agents or employees acting within the scope of their
2 employment; and

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

4 (2) For the purposes of this section, each general partner shall furnish the
5 required bond or letter of credit. When an employment agency is operated
6 by a limited liability company or corporation, the bond or letter of credit
7 shall be in the name of the limited liability company or corporation.

8 **SECTION 3. Sections 4 to 15 of this 2013 Act are added to and made**
9 **a part of ORS 658.005 to 658.245.**

10 **SECTION 4. (1) An employment agency may not, directly or indi-**
11 **rectly, charge for any special attire, accessories, tools, safety equip-**
12 **ment or other items required by law or custom to perform the work**
13 **assignment. For any other attire, accessories, tools, safety equipment**
14 **or items the employment agency makes available for purchase, the**
15 **employment agency may not charge the applicant more than the ac-**
16 **tual cost or reasonable market value, whichever is less, for the item.**

17 (2) An employment agency may not:

18 (a) Charge an applicant for transportation to and from a work site
19 or between work sites; or

20 (b) Directly or indirectly charge an applicant for cashing a pay-
21 check.

22 (3) An employment agency may not restrict the right of an appli-
23 cant to accept permanent employment with a client employer to whom
24 the applicant has been referred for temporary work or restrict the
25 right of a client employer to offer permanent employment to the ap-
26 plicant. The employment agency may not charge an applicant a fee
27 or fine for accepting an offer of permanent employment from a client
28 employer or charge a client employer additional amounts for offering
29 permanent employment to an applicant, except as otherwise provided
30 in ORS 658.005 to 658.245.

31 **SECTION 5. (1) An employment agency shall register as an em-**

1 **ployment agency with the Commissioner of the Bureau of Labor and**
2 **Industries in accordance with rules adopted by the commissioner.**

3 **(2) The commissioner shall establish by rule an annual employment**
4 **agency registration fee sufficient to cover the costs incurred by the**
5 **Bureau of Labor and Industries in administering ORS 658.005 to**
6 **658.245. All fees received pursuant to this section shall be credited to**
7 **the Bureau of Labor and Industries Account established under ORS**
8 **651.160 and may be used only for the administration of ORS 658.005 to**
9 **658.245.**

10 **(3) The commissioner may deny, suspend or revoke the registration**
11 **of an employment agency if warranted by public health and safety**
12 **concerns or any violation of ORS 658.005 to 658.245 or of any rule**
13 **adopted under ORS 658.005 to 658.245.**

14 **(4) In addition to any other penalty provided by law, the commis-**
15 **sioner may assess a civil penalty for each violation by an employment**
16 **agency that fails to register as required by this section. The civil**
17 **penalty is \$2,000 for the first violation and \$5,000 for the second and**
18 **any subsequent violations.**

19 **SECTION 6. (1) A day labor service agency is an employment**
20 **agency, unless the day labor service agency acts only as a farm labor**
21 **contractor and is licensed under ORS 658.405 to 658.503.**

22 **(2) A day labor service agency offering to refer day laborers to work**
23 **shall post in the public reception area of the day labor service agency**
24 **a notice to inform the public of employment rights of day laborers and**
25 **a toll-free telephone number for filing complaints with the Commis-**
26 **sioner of the Bureau of Labor and Industries about wage disputes and**
27 **alleged violations of ORS 658.005 to 658.245 by a day labor employer.**
28 **The commissioner shall publish a form of notice to be used by day**
29 **labor service agencies to meet this requirement.**

30 **(3) The written description of terms and conditions of the work re-**
31 **quired by section 7 of this 2013 Act must, in the case of a day labor**

1 employer or a day labor service agency, include:

2 (a) A description of the work to be performed and any requirements
3 for special attire, accessories, tools, safety equipment or other items
4 required by law or custom to perform the work assignment.

5 (b) The exact address of the work site and a telephone number at
6 which a day laborer can be reached for emergency purposes. If the
7 location is in a rural area, the written description of the work must
8 contain directions to the work site.

9 (c) The time of day the work will begin and the approximate time
10 of day the work will end.

11 (d) Whether a meal will be provided, either by the day labor service
12 agency or the client employer, and the cost of the meal, if any, that
13 would be charged to the day laborer.

14 (e) A telephone number and business address of the client employer
15 requesting the day laborer through the day labor service agency.

16 (4) The postings and the written description of the work required
17 by subsections (2) and (3) of this section shall be written in English
18 and any other language used by the day labor employer to communi-
19 cate with the worker.

20 (5) A day labor employer shall pay a day laborer not less than the
21 prevailing wage rate paid to permanent employees performing sub-
22 stantially equivalent work, with due consideration given to seniority,
23 experience and skills.

24 (6) When a day labor employer and a day laborer have agreed upon
25 a wage rate, the day labor employer may not reduce the agreed upon
26 wage rate during the term of the employment.

27 (7) A day labor employer shall provide, at no cost to a day laborer,
28 any special attire, accessories, tools, safety equipment or other items
29 required by law or custom to perform the work assignment. For any
30 other attire, accessories, tools, safety equipment or other items the
31 day labor employer makes available for purchase, the day labor em-

1 **ployer may not charge the day laborer more than the actual cost or**
2 **reasonable market value, whichever is less, for the item. If a day la-**
3 **borer willfully fails to return an item provided by the day labor em-**
4 **ployer, the day labor employer may charge the day laborer for the**
5 **market value of the item.**

6 **(8) If a day labor employer fails to appear at a designated time and**
7 **location after requesting a day laborer's services, the day labor em-**
8 **ployer shall compensate the day laborer for four hours of work at the**
9 **offered or regular rate of pay.**

10 **(9) Unless the day laborer requests otherwise, when a day laborer**
11 **has been transported to a work site, the day labor employer shall**
12 **provide transportation back to the point of hire at the end of each**
13 **work day.**

14 **(10) A day labor employer may not:**

15 **(a) Charge a day laborer for transportation to and from a work site**
16 **or between work sites.**

17 **(b) Directly or indirectly charge a day laborer for cashing a pay-**
18 **check.**

19 **(c) Send a day laborer to a workplace where a strike, a lockout or**
20 **other labor trouble exists.**

21 **(11) Any agreement between a day laborer and a day labor employer**
22 **to waive any rights or responsibilities under this section is void and**
23 **unenforceable as violative of public policy.**

24 **(12) When a day labor employer has not complied with any notifi-**
25 **cation or record keeping provisions required under this section or**
26 **rules adopted under this section, there is a rebuttable presumption**
27 **that any reasonable factual presentation by the day laborer and rea-**
28 **sonable inferences that can be drawn therefrom are accurate. This**
29 **presumption may be rebutted only by clear and convincing evidence.**

30 **(13) A day labor employer may not discharge, retaliate against or**
31 **in any other manner discriminate against a day laborer or day labor**

1 **employee because the day laborer or day labor employee:**

2 **(a) Has complained that the day labor employer has violated any**
3 **provision of this section.**

4 **(b) Has discussed, inquired or consulted with an attorney, a state**
5 **or federal agency, a collective bargaining representative, a worker**
6 **advocacy organization or a coworker concerning rights granted under**
7 **this section.**

8 **(c) Has made a statement at or in contemplation of a hearing,**
9 **grievance or arbitration or to the press in support of a claim or that**
10 **the provisions of this section or any rule related to this section have**
11 **been violated.**

12 **(d) Has caused to be instituted any proceeding under or related to**
13 **this section.**

14 **(e) Has testified, is about to testify or has prepared to testify in any**
15 **proceeding or has participated in an investigation of a claim under or**
16 **related to this section.**

17 **(f) Has assisted another employee to make a claim or has opposed**
18 **any action that is reasonably believed to be a violation of this section.**

19 **(g) Is believed by the day labor employer to have engaged in any**
20 **of the actions described in this subsection.**

21 **SECTION 7. (1) At the time of referral for employment or hiring,**
22 **whichever is first, an employment agency that refers workers to per-**
23 **form contingent employment in this state or an employer of anyone**
24 **in this state who performs contingent employment must provide to the**
25 **employee a written statement setting forth the terms and conditions**
26 **of the employee's employment, including any specific details required**
27 **by rule by the Commissioner of the Bureau of Labor and Industries.**

28 **(2) The statement of terms and conditions of employment required**
29 **by this section shall:**

30 **(a) Be provided to the employee prior to the time the employee**
31 **commences employment and at least annually thereafter; and**

1 (b) Be in English and in the principal language of the person re-
2 cruited or hired.

3 (3) Except as otherwise provided in ORS 658.005 to 658.245, an em-
4 ployer may modify the terms and conditions of employment disclosed
5 to an employee under this section to the extent permitted by other
6 federal, state and local laws. If an employer modifies the terms and
7 conditions of employment, the employer must provide a statement of
8 the new terms and conditions to the employee prior to the effective
9 date of the modification.

10 (4) The rights or obligations established under this section may not
11 be waived by the employer or the employee.

12 (5) There is hereby created a private cause of action for a violation
13 of this section.

14 (6) Upon finding a violation of this section, the court shall award
15 to the employee:

16 (a) Actual damages, including, but not limited to, lost wages and
17 benefits plus interest;

18 (b) Statutory damages of \$50 per day for each working day that vi-
19 olations occurred or continue to occur;

20 (c) Reasonable attorney fees and costs; and

21 (d) Other appropriate relief, including injunctive and declaratory
22 relief, that the commissioner or the court deems necessary or appro-
23 priate.

24 SECTION 8. (1) All employment agencies that pay wages and all
25 employers of employees in this state who perform contingent employ-
26 ment shall provide to the employee whenever wages are paid a written
27 statement sufficiently itemized to show:

28 (a) The dates of work covered by that payment of wages;

29 (b) The name of the employee;

30 (c) The name of the employer;

31 (d) The address and telephone number of the employer;

- 1 **(e) The rate or rates of pay;**
2 **(f) Whether paid by the hour, shift, day or week or on a salary,**
3 **piece or commission basis;**
4 **(g) Gross wages;**
5 **(h) The amount and purpose of the deductions made during the re-**
6 **spective period of service that the payment covers;**
7 **(i) Allowances, if any claimed as part of minimum wage;**
8 **(j) Net wages, unless the employee is paid on a salary basis and is**
9 **exempt from overtime compensation as established by local, state or**
10 **federal law, the regular hourly rate or rates of pay, the overtime rate**
11 **or rates of pay, the number of regular hours worked and pay for those**
12 **hours, and the number of overtime hours worked and pay for those**
13 **hours; and**
14 **(k) If the employee is paid a piece rate, the applicable piece rate or**
15 **rates of pay, the number of pieces completed at each piece rate and**
16 **the total pay for each rate.**
17 **(2) The itemized statement shall be furnished to the employee at the**
18 **time payment of wages, salary or commission is made, and may be**
19 **attached to or be a part of the check, draft, voucher or other instru-**
20 **ment by which payment is made, or may be delivered separately from**
21 **the instrument.**
22 **(3) The rights or obligations established under this section may not**
23 **be waived by the employer or employee.**
24 **(4) There is hereby created a private cause of action for violation**
25 **of this section.**
26 **(5) Upon finding a violation of this section, the court shall award**
27 **to the employee:**
28 **(a) Actual damages or \$200, whichever is greater, for each violation;**
29 **(b) Reasonable attorney fees and costs; and**
30 **(c) Other appropriate relief, including injunctive and declaratory**
31 **relief, that the court deems necessary or appropriate.**

1 **(6)(a) In addition to any other penalty provided by law, the com-**
2 **missioner may assess a civil penalty not to exceed \$1,000 against any**
3 **person who violates this section or any rule adopted under this sec-**
4 **tion.**

5 **(b) Civil penalties under this subsection shall be imposed as pro-**
6 **vided in ORS 183.745.**

7 **(c) All sums collected as penalties under this subsection shall be**
8 **applied first toward reimbursement of costs incurred in determining**
9 **the violations, conducting hearings under this subsection and ad-**
10 **dressing and collecting penalties. The remainder, if any, of the sums**
11 **collected as penalties under this subsection shall be paid into the State**
12 **Treasury and credited to the General Fund and is available for general**
13 **governmental expenses.**

14 **SECTION 9.** (1) **An employer, including joint employers of employ-**
15 **ees at a client work site, may not discriminate in any way in the**
16 **compensation paid to full-time employees and compensation paid to**
17 **employees employed in contingent employment. However, variations**
18 **in compensation are not prohibited when the variations are based on**
19 **differences in job duties.**

20 (2) **For the purpose of determining the compensation paid to full-**
21 **time employees that will be used to determine whether the employer**
22 **is discriminating against contingent employees, full-time compen-**
23 **sation is the gross hourly wages of similarly situated full-time em-**
24 **ployees, plus a 30 percent surcharge. The surcharge is deemed to be**
25 **paid to the contingent employee if the surcharge is included directly**
26 **in wages or is offered as part of the cost of health benefits and welfare**
27 **and retirement benefits.**

28 (3) **Nothing in subsections (1) and (2) of this section may be con-**
29 **strued to diminish or otherwise affect the requirements, guarantees**
30 **or protections under any bargaining agreement, company policy or**
31 **state or federal law that provides for greater or additional benefits**

1 **than those required under this section.**

2 **SECTION 10. (1) A person may not enter into a contract or agree-**
3 **ment with a construction, day labor, farm labor, janitorial or security**
4 **guard contractor for labor or services provided by workers in contin-**
5 **gent employment if the person knows or should know that the con-**
6 **tract or agreement does not include funds sufficient to allow the**
7 **contractor to comply with all applicable local, state and federal laws,**
8 **rules or regulations governing the labor or services to be provided.**

9 **(2) The person shall request any information from the contractor**
10 **that is reasonably necessary to determine whether the contract or**
11 **agreement between the person and the contractor includes funds suf-**
12 **ficient to allow the contractor to comply with all applicable local, state**
13 **and federal laws, rules or regulations governing the labor or services**
14 **to be provided under the contract or agreement. A person is presumed**
15 **to know the information described in this section, and a failure to**
16 **request the information from the contractor is no defense.**

17 **(3) This section does not apply to:**

18 **(a) A person that executes a collective bargaining agreement cov-**
19 **ering the workers employed under the contract or agreement; or**

20 **(b) A person that enters into a contract or agreement for labor or**
21 **services to be performed on the person's home residence if a family**
22 **member of the person resides for at least a part of the year in the**
23 **residence.**

24 **(4) A person that violates this section is jointly and severally liable**
25 **with the contractor to the Commissioner of the Bureau of Labor and**
26 **Industries or any worker of the contractor who is aggrieved by the**
27 **contractor's violation.**

28 **(5) The commissioner or any worker aggrieved by a violation of this**
29 **section may file a civil action for damages to recover the greater of**
30 **the worker's actual damages or \$250 per worker per violation for an**
31 **initial violation or \$1,000 per worker for each subsequent violation. If**

1 the commissioner or aggrieved worker prevails, the court shall award
2 the commissioner or worker reasonable attorney fees and costs. An
3 action under this subsection may not be maintained unless the com-
4 missioner or worker pleads and proves that the worker was damaged
5 as a result of a violation of an applicable local, state or federal law,
6 rule or regulation governing the labor or services provided under the
7 contract or agreement.

8 (6) The commissioner or worker aggrieved by a violation of this
9 section may also bring an action for injunctive relief and, upon pre-
10 vailing, may recover reasonable attorney fees and costs.

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

15 SECTION 12. If an employment agency has not complied with a
16 notification or record keeping provision required under ORS 658.005 to
17 658.245 or any rule adopted under ORS 658.005 to 658.245, there is a
18 rebuttable presumption that any reasonable factual presentation by
19 the applicant and reasonable inferences that can be drawn therefrom
20 are accurate. This presumption may be rebutted only by clear and
21 convincing evidence.

22 SECTION 13. An employment agency may not discharge, retaliate
23 against or in any other manner discriminate against an applicant or
24 employee because the applicant or employee:

25 (1) Has complained concerning rights granted under ORS 658.005 to
26 658.245.

27 (2) Has discussed, inquired or consulted with an attorney, a state
28 or federal agency, a collective bargaining representative, a worker
29 advocacy organization or a coworker concerning rights granted under
30 ORS 658.005 to 658.245.

31 (3) Has made a statement at or in contemplation of a hearing,

1 grievance or arbitration proceeding or to the press in support of a
2 claim or that provisions of ORS 658.005 to 658.245 or any rule related
3 to ORS 658.005 to 658.245 have been violated.

4 (4) Has caused to be instituted any proceeding under or related to
5 ORS 658.005 to 658.245.

6 (5) Has testified, is about to testify or has prepared to testify in any
7 proceeding or has participated in an investigation of a claim under or
8 related to ORS 658.005 to 658.245.

9 (6) Has assisted another applicant or employee to make a claim or
10 has opposed any action that is reasonably believed to be a violation
11 of ORS 658.005 to 658.245.

12 (7) Is believed by the employment agency to have engaged in any
13 of the actions described in this subsection.

14 **SECTION 14.** Except as provided in section 10 of this 2013 Act, any
15 individual aggrieved by a violation of ORS 658.005 to 658.245, or any
16 rule adopted under ORS 658.005 to 658.245, may file a civil action in
17 circuit court for damages and injunctive relief or as otherwise pro-
18 vided by statute. The filing of a complaint with the Commissioner of
19 the Bureau of Labor and Industries is not a condition precedent to the
20 filing of a civil action or any other procedure as provided by statute.
21 The civil action must be brought within three years after the last date
22 of employment with the employer. An action may be brought by one
23 or more individuals for and on behalf of themselves and other indi-
24 viduals similarly situated. In addition to injunctive relief, the com-
25 missioner or any individual whose rights have been violated under
26 ORS 658.005 to 658.245, or any rule adopted under ORS 658.005 to 658.245,
27 is entitled to collect:

28 (1) Damages incurred, including treble damages for any loss of
29 wages and other benefits, or an amount of \$1,000 for each violation,
30 whichever is greater;

31 (2) In the case of unlawful retaliation, all legal or equitable relief

1 **that may be appropriate; and**

2 **(3) Attorney fees and costs.**

3 **SECTION 15. The Commissioner of the Bureau of Labor and In-**
4 **dustries shall promptly investigate any complaint filed with the com-**
5 **missioner that alleges a violation of ORS 658.005 to 658.245 or any rule**
6 **adopted under ORS 658.005 to 658.245.**

7 **SECTION 16. ORS 658.210 is amended to read:**

8 658.210. The Commissioner of the Bureau of Labor and Industries [*may*]
9 **shall:**

10 **(1) Adopt rules reasonably necessary for the administration of ORS**
11 **658.005 to 658.245, including rules for hearings and the assessment of**
12 **civil penalties for violations of ORS 658.005 to 658.245; and**

13 **(2) Provide information to employment agencies and day labor em-**
14 **ployers concerning their duties under ORS 658.005 to 658.245.**

15 **SECTION 17. Section 5 of this 2013 Act becomes operative on July**
16 **1, 2015.**

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