

DRAFT

SUMMARY

Modifies definitions of “employ,” “employee,” “employer” and “wages” for purposes of statutes relating to hours, wages, wage claims, employment conditions, employment agencies, farm labor contractors and construction contractors.

Creates presumption of employee status under certain conditions.

A BILL FOR AN ACT

1
2 Relating to definitions of terms concerning employment; creating new pro-
3 visions; and amending ORS 652.310, 652.320, 652.750, 653.010, 658.005,
4 658.405 and 701.005.

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

6 **SECTION 1.** ORS 652.310 is amended to read:

7 652.310. As used in ORS 652.310 to 652.414, unless the context requires
8 otherwise:

9 **(1) “Employ”:**

10 **(a) Includes to suffer or permit to work.**

11 **(b) Does not include:**

12 **(A) Voluntary or donated services performed for no compensation**
13 **or without expectation or contemplation of compensation for services**
14 **provided to a public body as defined in ORS 174.109 or a religious,**
15 **charitable, educational, public service or similar nonprofit corpo-**
16 **ration, organization or institution for community service, religious or**
17 **humanitarian reasons; or**

18 **(B) Services performed by general or public assistance recipients**
19 **as part of a work training program administered under state or federal**

1 assistance laws.

2 (2) “Employee” means any individual employed by an employer in
3 this state. An individual performing services that are an integral part
4 of the business of another is presumed to be an employee unless the
5 individual is customarily engaged in an independently established
6 business of the same nature as that involved in the services per-
7 formed.

8 [(1)] (3)(a) “Employer” means *[any person who in this state, directly or*
9 *through an agent, engages personal services of one or more employees and in-*
10 *cludes any successor to the business of any employer, or any lessee or pur-*
11 *chaser of any employer’s business property for the continuance of the same*
12 *business, so far as such employer has not paid employees in full. “Employer”*
13 *includes the State of Oregon or any political subdivision thereof or any county,*
14 *city, district, authority, public corporation or entity and any of their instru-*
15 *mentalities organized and existing under law or charter but]:*

16 (A) Any person or a public body as defined in ORS 174.109, that
17 employs an individual, and any other person acting directly or indi-
18 rectly in the interest of an employer in relation to an employee; and

19 (B) To the extent an employer has not paid employees in full, any
20 successor to the business of the employer or a purchaser of the
21 employer’s property for the continuance of the same business.

22 (b) “Employer” does not *[include]* mean:

23 [(a)] (A) The United States Government.

24 [(b)] (B) Trustees and assignees in bankruptcy or insolvency, and receiv-
25 ers, whether appointed by federal or state courts, and persons otherwise
26 falling under the definition of employers so far as the times or amounts of
27 their payments to employees are regulated by laws of the United States, or
28 regulations or orders made in pursuance thereof.

29 [(2) “Employee” means any individual who otherwise than as copartner of
30 the employer or as an independent contractor renders personal services wholly
31 or partly in this state to an employer who pays or agrees to pay such individ-

1 *ual at a fixed rate, based on the time spent in the performance of such services*
2 *or on the number of operations accomplished, or quantity produced or handled.*

3 *However:]*

4 *[(a) Where services are rendered by an independent contractor, an individ-*
5 *ual shall not be an employee under this section unless the individual is a*
6 *musician or supporting technical person.]*

7 *[(b) Where services are rendered only partly in this state, an individual*
8 *shall not be an employee under this section unless the contract of employment*
9 *of the employee has been entered into, or payments thereunder are ordinarily*
10 *made or to be made, within this state.]*

11 **SECTION 2.** ORS 652.320 is amended to read:

12 652.320. As used in ORS 652.310 to 652.414, unless the context requires
13 otherwise:

14 (1) “Commissioner” means the Commissioner of the Bureau of Labor and
15 Industries.

16 (2) “Court” means a court of competent jurisdiction and proper venue to
17 entertain a proceeding referred to in ORS 652.310 to 652.414.

18 (3) “Demand” means a written demand for payment made during business
19 hours on an employer or any appropriate representative of an employer by
20 an employee or by some person having and exhibiting due authority to act
21 in said employee’s behalf.

22 (4) “Pay” means to deliver or tender compensation at a previously desig-
23 nated and reasonably convenient place in this state, during working hours,
24 in legal tender or by order or negotiable instrument payable and paid in le-
25 gal tender without discount on demand in this state or by deposit without
26 discount in an employee’s account in a financial institution, as defined in
27 ORS 706.008, in this state, provided the employee and the employer have
28 agreed to such deposit.

29 (5) “Payment” means the delivery, tender or deposit of compensation in
30 the medium of payment described in subsection (4) of this section. Such de-
31 livery, tender or deposit shall be made to or for the account of the employee

1 concerned or to or for the account of any person having due authority to act
2 in said employee's behalf.

3 (6) "Rate of payment" means the rate at which payment is made or is to
4 be made in the manner described in this section.

5 (7) "Wage claim" means an employee's claim against an employer for
6 compensation for the employee's own personal services, and includes any
7 wages, compensation, damages or civil penalties provided by law to employ-
8 ees in connection with a claim for unpaid wages.

9 **(8) "Wages" means all compensation for performance of service by**
10 **an employee for an employer, including penalty wages owed under**
11 **ORS 652.150, whether paid by the employer or another person, payable**
12 **in legal tender of the United States or check on banks convertible into**
13 **cash on demand at full face value, subject to deductions, charges or**
14 **allowances as are permitted in ORS 653.035.**

15 **SECTION 3.** ORS 653.010 is amended to read:

16 653.010. As used in ORS 653.010 to 653.261, unless the context requires
17 otherwise:

18 (1) "Commissioner" means the Commissioner of the Bureau of Labor and
19 Industries.

20 (2) "Employ" includes to suffer or permit to work but does not include
21 voluntary or donated services performed for no compensation or without ex-
22 pectation or contemplation of compensation as the adequate consideration
23 for the services performed for a public [*employer referred to in subsection (3)*
24 *of this section*] **body as defined in ORS 174.109**, or a religious, charitable,
25 educational, public service or similar nonprofit corporation, organization or
26 institution for community service, religious or humanitarian reasons or for
27 services performed by general or public assistance recipients as part of any
28 work training program administered under the state or federal assistance
29 laws.

30 **(3) "Employee" means an individual employed by an employer in**
31 **this state. An individual who performs services that are an integral**

1 **part of the business of another person for remuneration is presumed**
2 **to be an employee unless the individual who performs the services for**
3 **another person is customarily engaged in an independently established**
4 **business of the same nature as the business of the person for whom**
5 **the services are performed.**

6 [(3)] (4)(a) “Employer” means *[any person who employs another person in-*
7 *cluding the State of Oregon or a political subdivision thereof or any county,*
8 *city, district, authority, public corporation or entity and any of their instru-*
9 *mentalities organized and existing under law or charter.]:*

10 (A) **Any person that employs an individual, including a public body,**
11 **as defined in ORS 174.109, and any other person acting directly or in-**
12 **directly in the interest of an employer in relation to an employee; and**

13 (B) **To the extent that an employer has not paid employees in full,**
14 **a successor to the business of the employer or a purchaser or lessee**
15 **of the business property of the employer for the continuance of the**
16 **same business.**

17 (b) **“Employer” does not mean the United States Government.**

18 [(4)] (5) “Minor” means any person under 18 years of age.

19 [(5)] (6) “Occupation” means any occupation, service, trade, business, in-
20 dustry, or branch or group of industries or employment or class of employ-
21 ment in which employees are gainfully employed.

22 [(6)] (7) “Organized camp” means a day or resident camp, whether or not
23 operated for profit, established to give campers recreational, creative, reli-
24 gious or educational experience in cooperative group living wherein the ac-
25 tivities are conducted on a closely supervised basis, whether or not the camp
26 is used primarily by an organized group or by members of the public and
27 whether or not the activities or facilities are furnished free of charge or for
28 the payment of a fee.

29 [(7)] (8) “Outside salesperson” means any employee who is employed for
30 the purpose of and who is customarily and regularly engaged away from the
31 employer’s place or places of business in making sales, or obtaining orders,

1 or obtaining contracts for services and whose hours of work of any other
2 nature for the employer do not exceed 30 percent of the hours worked in the
3 workweek by the nonexempt employees of the employer.

4 [(8)] (9) “Piece-rate” means a rate of pay calculated on the basis of the
5 quantity of the crop harvested.

6 [(9)] (10) “Salary” means no less than the wage set pursuant to ORS
7 653.025, multiplied by 2,080 hours per year, then divided by 12 months.

8 [(10)] (11) “Wages” means [*compensation due to an employee by reason of*
9 *employment*] **all compensation for performance of service by an em-**
10 **ployee for an employer, including penalty wages owed under ORS**
11 **652.150, whether paid by the employer or another person**, payable in le-
12 gal tender of the United States or check on banks convertible into cash on
13 demand at full face value, subject to [*such*] deductions, charges or allowances
14 as are permitted in ORS 653.035.

15 [(11)] (12) “Work time” includes both time worked and time of authorized
16 attendance.

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

18 658.005. As used in ORS 658.005 to 658.245, unless the context requires
19 otherwise:

20 (1) “Applicant for employment” or “applicant” means an individual who
21 is seeking or who has obtained employment through the services of an em-
22 ployment agency.

23 (2) “Charge for services” means any money or other consideration paid
24 or promised to be paid by an applicant for employment for services rendered
25 by an employment agency.

26 (3) “Commissioner” means the Commissioner of the Bureau of Labor and
27 Industries.

28 (4) “Employ” has the meaning given that term in ORS 653.010.

29 (5) “Employee” has the meaning given that term in ORS 653.010.

30 (6) “Employer” has the meaning given that term in ORS 653.010.

31 [(4)(a)] (7)(a) “Employment agency” or “agency” means a business, ser-

1 vice, bureau or club operated by a person, firm, organization, limited liability
2 company or corporation engaged in procuring for a fee, employment for oth-
3 ers and employees for employers.

4 (b) “Employment agency” or “agency” does not include:

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

7 (B) Any business, person, service, bureau, organization or club that by
8 advertisement or otherwise offers as its main object or purpose to counsel,
9 teach or prepare individuals to obtain employment, and which charges for its
10 services, whether in the form of dues, tuition, membership fees, registration
11 fees or any other valuable service.

12 (C) Any business, service, bureau or club operated by a person engaged
13 in procuring employment for others when the charges for services are paid,
14 directly or indirectly, by anyone other than the applicant for employment.

15 (D) An employment listing service, as defined in ORS 658.250.

16 **(8) “Wages” has the meaning given that term in ORS 653.010.**

17 **SECTION 5.** ORS 658.405 is amended to read:

18 658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless
19 the context requires otherwise:

20 (1) “Agricultural association” means a nonprofit or cooperative associ-
21 ation of farmers, growers or ranchers that is incorporated under applicable
22 state law and that acts as a farm labor contractor solely on behalf of mem-
23 bers of the association.

24 (2) “Commissioner” means the Commissioner of the Bureau of Labor and
25 Industries.

26 (3) “Crew leader” means the member of a group of workers who (a) acts
27 as spokesman for the group, (b) travels with the group from another state
28 into Oregon and (c) performs the same work along with other group mem-
29 bers. A crew leader may transport workers from their local place of residence
30 to their place of employment so long as the crew leader does not perform this
31 service for a profit.

1 **(4) “Employ” has the meaning given that term in ORS 653.010.**

2 **(5) “Employee” has the meaning given that term in ORS 653.010.**

3 **(6) “Employer” has the meaning given that term in ORS 653.010.**

4 [(4)] **(7) “Farm labor contractor”** means any person who, for an agreed
5 remuneration or rate of pay, recruits, solicits, supplies or employs workers
6 to perform labor for another to work in forestation or reforestation of lands,
7 including but not limited to the planting, transplanting, tubing, precommer-
8 cial thinning and thinning of trees and seedlings, the clearing, piling and
9 disposal of brush and slash and other related activities or the production or
10 harvesting of farm products; or who recruits, solicits, supplies or employs
11 workers to gather evergreen boughs, yew bark, bear grass, salal or ferns from
12 public lands for sale or market prior to processing or manufacture; or who
13 recruits, solicits, supplies or employs workers on behalf of an employer en-
14 gaged in these activities; or who, in connection with the recruitment or em-
15 ployment of workers to work in these activities, furnishes board or lodging
16 for such workers; or who bids or submits prices on contract offers for those
17 activities; or who enters into a subcontract with another for any of those
18 activities. However, “farm labor contractor” does not include:

19 (a) Farmers, including owners or lessees of land intended to be used for
20 the production of timber, their permanent employees, advertising media,
21 platoon leaders or individuals engaged in the solicitation or recruitment of
22 persons for dayhaul work in connection with the growing, production or
23 harvesting of farm products;

24 (b) The Employment Department;

25 (c) A crew leader;

26 (d) An individual who performs work, other than recruiting, supplying,
27 soliciting or employing workers to perform labor for another, alone or only
28 with the assistance of the individual’s spouse, son, daughter, brother, sister,
29 mother or father;

30 (e) Individuals who perform labor pursuant to an agreement for exchang-
31 ing their own labor or services with each other, provided the work is per-

1 formed on land owned or leased by the individuals;

2 (f) An educational institution that is recognized as such by the Depart-
3 ment of Education; or

4 (g) A farmer who operates a farmworker camp, regulated under ORS
5 658.750, who recruits, supplies, solicits or employs workers only for the
6 farmer's own operations, and has farmworkers living in the camp who are
7 employed by another on no more than an incidental basis, and the farmer
8 receives no remuneration by virtue of such incidental employment.

9 **(8) "Wages" has the meaning given that term in ORS 653.010.**

10 **SECTION 6.** ORS 701.005 is amended to read:

11 701.005. As used in this chapter:

12 (1) "Board" means the Construction Contractors Board.

13 (2) "Commercial contractor" means a licensed contractor that holds an
14 endorsement as a:

15 (a) Commercial general contractor level 1;

16 (b) Commercial specialty contractor level 1;

17 (c) Commercial general contractor level 2;

18 (d) Commercial specialty contractor level 2; or

19 (e) Commercial developer.

20 (3) "Commercial developer" means a developer of property that is zoned
21 for or intended for use compatible with a small commercial or large com-
22 mercial structure.

23 (4) "Construction debt" means an amount owed under:

24 (a) An order or arbitration award issued by the board that has become
25 final by operation of law;

26 (b) A judgment, arbitration award or civil penalty that has become final
27 by operation of law arising from construction activities within the United
28 States; or

29 (c) A judgment or civil penalty that has become final by operation of law
30 arising from a failure to comply with ORS 656.017.

31 (5) "Contractor" means any of the following:

1 (a) A person that, for compensation or with the intent to sell, arranges
2 or undertakes or offers to undertake or submits a bid to construct, alter,
3 repair, add to, subtract from, improve, inspect, move, wreck or demolish, for
4 another, a building, highway, road, railroad, excavation or other structure,
5 project, development or improvement attached to real estate, or to do any
6 part thereof.

7 (b) A person that purchases or owns property and constructs or for com-
8 pensation arranges for the construction of one or more residential structures
9 or small commercial structures with the intent of selling the structures.

10 (c) A school district, as defined in ORS 332.002, that permits students to
11 construct a residential structure or small commercial structure as an edu-
12 cational experience to learn building techniques and sells the completed
13 structure.

14 (d) A community college district, as defined in ORS 341.005, that permits
15 students to construct a residential structure or small commercial structure
16 as an educational experience to learn building techniques and sells the
17 completed structure.

18 (e) A person except a landscape contracting business, nurseryman,
19 gardener or person engaged in the commercial harvest of forest products,
20 that is engaged as an independent contractor to remove trees, prune trees,
21 remove tree limbs or stumps or to engage in tree or limb guying.

22 (f) A business that supplies the services of a home inspector certified
23 under ORS 701.350 or a cross-connection inspector and backflow assembly
24 tester certified under ORS 448.279.

25 (g) A person that for compensation arranges, undertakes, offers to
26 undertake or submits a bid to clean or service chimneys.

27 (6) "Developer" means a contractor that owns property or an interest in
28 property and engages in the business of arranging for construction work or
29 performing other activities associated with the improvement of real property,
30 with the intent to sell the property.

31 **(7) "Employ" has the meaning given that term in ORS 653.010.**

1 **(8) “Employee” has the meaning given that term in ORS 653.010.**

2 **(9) “Employer” has the meaning given that term in ORS 653.010.**

3 [(7)(a)] **(10)(a)** “General contractor” means a contractor whose business
4 operations require the use of more than two unrelated building trades or
5 crafts that the contractor supervises or performs in whole or part, whenever
6 the sum of all contracts on any single property, including materials and la-
7 bor, exceeds an amount established by rule by the board.

8 (b) “General contractor” does not mean a specialty contractor or a resi-
9 dential limited contractor.

10 [(8)(a)] **(11)(a)** “Home improvement” means a renovation, remodel, repair
11 or alteration by a residential contractor to an existing owner-occupied:

12 (A) Residence that is a site-built home;

13 (B) Condominium, rental residential unit or other residential dwelling
14 unit that is part of a larger structure, if the property interest in the unit is
15 separate from the property interest in the larger structure;

16 (C) Modular home constructed off-site;

17 (D) Manufactured dwelling; or

18 (E) Floating home, as defined in ORS 830.700.

19 (b) “Home improvement” does not include a renovation, remodel, repair
20 or alteration by a residential contractor:

21 (A) To a structure that contains one or more dwelling units and is four
22 stories or less above grade; or

23 (B) That the residential contractor performed in the course of construct-
24 ing a new residential structure.

25 [(9)(a)] **(12)(a)** “Home inspector” means a person who, for a fee, inspects
26 and provides written reports on the overall physical condition of a residen-
27 tial structure.

28 (b) “Home inspector” does not include persons certified under ORS chap-
29 ter 455 to inspect new, repaired or altered structures for compliance with the
30 state building code.

31 [(10)] **(13)** “Key employee” means an employee or owner of a contractor

1 who is a corporate officer, manager, superintendent, foreperson or lead per-
2 son or any other employee the board identifies by rule.

3 [(11)] **(14)** “Large commercial structure” means a structure that is not a
4 residential structure or small commercial structure.

5 [(12)] **(15)** “Officer” means any of the following persons:

6 (a) A president, vice president, secretary, treasurer or director of a cor-
7 poration.

8 (b) A general partner in a limited partnership.

9 (c) A manager in a manager-managed limited liability company.

10 (d) A member of a member-managed limited liability company.

11 (e) A trustee.

12 (f) A person the board defines by rule as an officer. The definition of of-
13 ficer adopted by board rule may include persons not listed in this subsection
14 who may exercise substantial control over a business.

15 [(13)] **(16)** “Residential contractor” means a licensed contractor that holds
16 an endorsement as a:

17 (a) Residential general contractor;

18 (b) Residential specialty contractor;

19 (c) Residential limited contractor; or

20 (d) Residential developer.

21 [(14)] **(17)** “Residential developer” means a developer of property that is
22 zoned for or intended for use compatible with a residential or small com-
23 mercial structure.

24 [(15)(a)] **(18)(a)** “Residential structure” means:

25 (A) A residence that is a site-built home;

26 (B) A structure that contains one or more dwelling units and is four
27 stories or less above grade;

28 (C) A condominium, rental residential unit or other residential dwelling
29 unit that is part of a larger structure, if the property interest in the unit is
30 separate from the property interest in the larger structure;

31 (D) A modular home constructed off-site;

- 1 (E) A manufactured dwelling;
- 2 (F) A floating home as defined in ORS 830.700; or
- 3 (G) An appurtenance to a home, structure, unit or dwelling described in
- 4 subparagraphs (A) to (F) of this paragraph.

5 (b) "Residential structure" does not mean:

6 (A) Subject to paragraph (a)(C) of this subsection, a structure that con-

7 tains both residential and nonresidential units;

8 (B) Transient lodging;

9 (C) A residential school or residence hall;

10 (D) A state or local correctional facility other than a local facility for

11 persons enrolled in work release programs maintained under ORS 144.460;

12 (E) A youth correction facility as defined in ORS 420.005;

13 (F) A youth care center operated by a county juvenile department under

14 administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;

15 (G) A detention facility as defined in ORS 419A.004;

16 (H) A nursing home;

17 (I) A hospital; or

18 (J) A place constructed primarily for recreational activities.

19 [(16)] **(19)** "Responsible managing individual" means an individual who:

20 (a) Is an owner described in ORS 701.094 or an employee of the business;

21 (b) Exercises management or supervisory authority, as defined by the

22 board by rule, over the construction activities of the business; and

23 (c)(A) Successfully completed the training and testing required for li-

24 censing under ORS 701.122 within a period the board identifies by rule;

25 (B) Demonstrated experience the board requires by rule; or

26 (C) Complied with the licensing requirements of ORS 446.395.

27 [(17)] **(20)** "Small commercial structure" means:

28 (a) A nonresidential structure that has a ground area of 10,000 square feet

29 or less, including exterior walls, and a height of not more than 20 feet from

30 the top surface of the lowest flooring to the highest interior overhead finish

31 of the structure;

1 (b) A nonresidential leasehold, rental unit or other unit that is part of a
2 larger structure, if the unit has a ground area of 12,000 square feet or less,
3 excluding exterior walls, and a height of not more than 20 feet from the top
4 surface of the lowest flooring to the highest interior overhead finish of the
5 unit;

6 (c) A nonresidential structure of any size for which the contract price of
7 all construction contractor work to be performed on the structure as part
8 of a construction project does not total more than \$250,000; or

9 (d) An appurtenance to a structure or unit described in paragraphs (a) to
10 (c) of this subsection.

11 [(18)] (21) "Specialty contractor" means a contractor who performs work
12 on a structure, project, development or improvement and whose operations
13 as such do not fall within the definition of "general contractor." "Specialty
14 contractor" includes a person who performs work regulated under ORS
15 446.395.

16 [(19)] (22) "Zero-lot-line dwelling" means a single-family dwelling unit
17 constructed in a group of attached units in which:

18 (a) Each attached unit extends from foundation to roof with open space
19 on two sides; and

20 (b) Each dwelling unit is separated by a property line.

21 **SECTION 7.** ORS 701.005, as amended by section 59, chapter 630, Oregon
22 Laws 2011, is amended to read:

23 701.005. As used in this chapter:

24 (1) "Board" means the Construction Contractors Board.

25 (2) "Commercial contractor" means a licensed contractor that holds an
26 endorsement as a:

27 (a) Commercial general contractor level 1;

28 (b) Commercial specialty contractor level 1;

29 (c) Commercial general contractor level 2;

30 (d) Commercial specialty contractor level 2; or

31 (e) Commercial developer.

1 (3) “Commercial developer” means a developer of property that is zoned
2 for or intended for use compatible with a small commercial or large com-
3 mercial structure.

4 (4) “Construction debt” means an amount owed under:

5 (a) An order or arbitration award issued by the board that has become
6 final by operation of law;

7 (b) A judgment or civil penalty that has become final by operation of law
8 arising from construction activities within the United States; or

9 (c) A judgment or civil penalty that has become final by operation of law
10 arising from a failure to comply with ORS 656.017.

11 (5) “Contractor” means any of the following:

12 (a) A person that, for compensation or with the intent to sell, arranges
13 or undertakes or offers to undertake or submits a bid to construct, alter,
14 repair, add to, subtract from, improve, inspect, move, wreck or demolish, for
15 another, a building, highway, road, railroad, excavation or other structure,
16 project, development or improvement attached to real estate, or to do any
17 part thereof.

18 (b) A person that purchases or owns property and constructs or for com-
19 pensation arranges for the construction of one or more residential structures
20 or small commercial structures with the intent of selling the structures.

21 (c) A school district, as defined in ORS 332.002, that permits students to
22 construct a residential structure or small commercial structure as an edu-
23 cational experience to learn building techniques and sells the completed
24 structure.

25 (d) A community college district, as defined in ORS 341.005, that permits
26 students to construct a residential structure or small commercial structure
27 as an educational experience to learn building techniques and sells the
28 completed structure.

29 (e) A person except a landscape contracting business, nurseryman,
30 gardener or person engaged in the commercial harvest of forest products,
31 that is engaged as an independent contractor to remove trees, prune trees,

1 remove tree limbs or stumps or to engage in tree or limb guying.

2 (f) A business that supplies the services of a home inspector certified
3 under ORS 701.350 or a cross-connection inspector and backflow assembly
4 tester certified under ORS 448.279.

5 (g) A person that for compensation arranges, undertakes, offers to
6 undertake or submits a bid to clean or service chimneys.

7 (6) "Developer" means a contractor that owns property or an interest in
8 property and engages in the business of arranging for construction work or
9 performing other activities associated with the improvement of real property,
10 with the intent to sell the property.

11 **(7) "Employ" has the meaning given that term in ORS 653.010.**

12 **(8) "Employee" has the meaning given that term in ORS 653.010.**

13 **(9) "Employer" has the meaning given that term in ORS 653.010.**

14 [(7)(a)] **(10)(a)** "General contractor" means a contractor whose business
15 operations require the use of more than two unrelated building trades or
16 crafts that the contractor supervises or performs in whole or part, whenever
17 the sum of all contracts on any single property, including materials and la-
18 bor, exceeds an amount established by rule by the board.

19 (b) "General contractor" does not mean a specialty contractor or a resi-
20 dential limited contractor.

21 [(8)(a)] **(11)(a)** "Home improvement" means a renovation, remodel, repair
22 or alteration by a residential contractor to an existing owner-occupied:

23 (A) Residence that is a site-built home;

24 (B) Condominium, rental residential unit or other residential dwelling
25 unit that is part of a larger structure, if the property interest in the unit is
26 separate from the property interest in the larger structure;

27 (C) Modular home constructed off-site;

28 (D) Manufactured dwelling; or

29 (E) Floating home, as defined in ORS 830.700.

30 (b) "Home improvement" does not include a renovation, remodel, repair
31 or alteration by a residential contractor:

1 (A) To a structure that contains one or more dwelling units and is four
2 stories or less above grade; or

3 (B) That the residential contractor performed in the course of construct-
4 ing a new residential structure.

5 [(9)(a)] **(12)(a)** “Home inspector” means a person who, for a fee, inspects
6 and provides written reports on the overall physical condition of a residen-
7 tial structure.

8 (b) “Home inspector” does not include persons certified under ORS chap-
9 ter 455 to inspect new, repaired or altered structures for compliance with the
10 state building code.

11 [(10)] **(13)** “Key employee” means an employee or owner of a contractor
12 who is a corporate officer, manager, superintendent, foreperson or lead per-
13 son or any other employee the board identifies by rule.

14 [(11)] **(14)** “Large commercial structure” means a structure that is not a
15 residential structure or small commercial structure.

16 [(12)] **(15)** “Officer” means any of the following persons:

17 (a) A president, vice president, secretary, treasurer or director of a cor-
18 poration.

19 (b) A general partner in a limited partnership.

20 (c) A manager in a manager-managed limited liability company.

21 (d) A member of a member-managed limited liability company.

22 (e) A trustee.

23 (f) A person the board defines by rule as an officer. The definition of of-
24 ficer adopted by board rule may include persons not listed in this subsection
25 who may exercise substantial control over a business.

26 [(13)] **(16)** “Residential contractor” means a licensed contractor that holds
27 an endorsement as a:

28 (a) Residential general contractor;

29 (b) Residential specialty contractor;

30 (c) Residential limited contractor; or

31 (d) Residential developer.

1 ~~[(14)]~~ **(17)** “Residential developer” means a developer of property that is
2 zoned for or intended for use compatible with a residential or small com-
3 mercial structure.

4 ~~[(15)(a)]~~ **(18)(a)** “Residential structure” means:

5 (A) A residence that is a site-built home;

6 (B) A structure that contains one or more dwelling units and is four
7 stories or less above grade;

8 (C) A condominium, rental residential unit or other residential dwelling
9 unit that is part of a larger structure, if the property interest in the unit is
10 separate from the property interest in the larger structure;

11 (D) A modular home constructed off-site;

12 (E) A manufactured dwelling;

13 (F) A floating home as defined in ORS 830.700; or

14 (G) An appurtenance to a home, structure, unit or dwelling described in
15 subparagraphs (A) to (F) of this paragraph.

16 (b) “Residential structure” does not mean:

17 (A) Subject to paragraph (a)(C) of this subsection, a structure that con-
18 tains both residential and nonresidential units;

19 (B) Transient lodging;

20 (C) A residential school or residence hall;

21 (D) A state or local correctional facility other than a local facility for
22 persons enrolled in work release programs maintained under ORS 144.460;

23 (E) A youth correction facility as defined in ORS 420.005;

24 (F) A youth care center operated by a county juvenile department under
25 administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;

26 (G) A detention facility as defined in ORS 419A.004;

27 (H) A nursing home;

28 (I) A hospital; or

29 (J) A place constructed primarily for recreational activities.

30 ~~[(16)]~~ **(19)** “Responsible managing individual” means an individual who:

31 (a) Is an owner described in ORS 701.094 or an employee of the business;

1 (b) Exercises management or supervisory authority, as defined by the
2 board by rule, over the construction activities of the business; and

3 (c)(A) Successfully completed the training and testing required for li-
4 censing under ORS 701.122 within a period the board identifies by rule;

5 (B) Demonstrated experience the board requires by rule; or

6 (C) Complied with the licensing requirements of ORS 446.395.

7 [(17)] **(20)** “Small commercial structure” means:

8 (a) A nonresidential structure that has a ground area of 10,000 square feet
9 or less, including exterior walls, and a height of not more than 20 feet from
10 the top surface of the lowest flooring to the highest interior overhead finish
11 of the structure;

12 (b) A nonresidential leasehold, rental unit or other unit that is part of a
13 larger structure, if the unit has a ground area of 12,000 square feet or less,
14 excluding exterior walls, and a height of not more than 20 feet from the top
15 surface of the lowest flooring to the highest interior overhead finish of the
16 unit;

17 (c) A nonresidential structure of any size for which the contract price of
18 all construction contractor work to be performed on the structure as part
19 of a construction project does not total more than \$250,000; or

20 (d) An appurtenance to a structure or unit described in paragraphs (a) to
21 (c) of this subsection.

22 [(18)] **(21)** “Specialty contractor” means a contractor who performs work
23 on a structure, project, development or improvement and whose operations
24 as such do not fall within the definition of “general contractor.” “Specialty
25 contractor” includes a person who performs work regulated under ORS
26 446.395.

27 [(19)] **(22)** “Zero-lot-line dwelling” means a single-family dwelling unit
28 constructed in a group of attached units in which:

29 (a) Each attached unit extends from foundation to roof with open space
30 on two sides; and

31 (b) Each dwelling unit is separated by a property line.

1 **SECTION 8. As used in ORS 652.110 to 652.200:**

2 (1) “Employ” has the meaning given that term in ORS 653.010.

3 (2) “Employee” has the meaning given that term in ORS 653.010.

4 (3) “Employer” has the meaning given that term in ORS 653.010.

5 **SECTION 9. As used in ORS 652.610 to 652.640:**

6 (1) “Employ” has the meaning given that term in ORS 653.010.

7 (2) “Employee” has the meaning given that term in ORS 653.010.

8 (3) “Employer” has the meaning given that term in ORS 653.010.

9 **SECTION 10.** ORS 652.750 is amended to read:

10 652.750. (1) As used in this section:

11 (a) “Employ” has the meaning given that term in ORS 653.010.

12 (b) “Employee” has the meaning given that term in ORS 653.010.

13 [(a)] (c) “Employer” has the meaning given that term in ORS [656.005]

14 **653.010.**

15 [(b)] (d) “Personnel records” does not include records of an individual
16 relating to the conviction, arrest or investigation of conduct constituting a
17 violation of the criminal laws of this state or another state or the United
18 States, confidential reports from previous employers or records maintained
19 in compliance with ORS 351.065.

20 [(c)] (e) “Public safety officer” has the meaning given that term in ORS
21 236.350.

22 (2) Except as provided in subsection (7) of this section, within 45 days
23 after receipt of an employee’s request, an employer shall provide reasonable
24 opportunity for the employee to inspect, at the place of employment or place
25 of work assignment, the personnel records of the employee that are used or
26 have been used to determine the employee’s qualification for employment,
27 promotion, additional compensation or employment termination or other
28 disciplinary action. Within 45 days after receipt of the employee’s request,
29 the employer shall furnish a certified copy of the records.

30 (3) Upon termination of employment, the employer shall keep the termi-
31 nated employee’s personnel records for not less than 60 days. Within the

1 60-day period, the employer shall provide the employee with a certified copy
2 of the records within 45 days of receiving the employee's request. After the
3 60-day period, the employer shall provide the certified copy within 45 days
4 of receiving the employee's request if the employer has the records at the
5 time of the request.

6 (4) Notwithstanding the time periods described in subsections (2) and (3)
7 of this section, if the employee's personnel records are not readily available,
8 the employer and the employee may agree to extend the time within which
9 the employer must provide the employee reasonable opportunity to inspect
10 the records or furnish the employee a certified copy of the records.

11 (5) For the services referred to in subsections (2) and (3) of this section
12 only, an employer may charge an employee no more than an amount rea-
13 sonably calculated to recover the actual cost of providing the services.

14 (6)(a) Except as provided in paragraphs (b) and (c) of this subsection, an
15 employer may not place an adverse comment in the personnel records of a
16 public safety officer unless the officer has first read and signed the document
17 containing the adverse comment.

18 (b) If a public safety officer refuses to sign a document containing an
19 adverse comment, the employer may place the document in the officer's per-
20 sonnel records with a notation that the document was presented to the offi-
21 cer and the officer refused to sign it.

22 (c) If a public safety officer is not available to read and sign the document
23 containing an adverse comment at the work location where the personnel
24 files are maintained, the employer may place the document in the officer's
25 personnel records and mail a copy of the document to the officer by regular
26 mail or interoffice mail.

27 (d) A public safety officer may write a response within 30 days of being
28 presented with a document containing an adverse comment. If a public safety
29 officer writes a response to a document containing an adverse comment, the
30 response must be attached to the original document and placed in the
31 officer's personnel records.

1 (7)(a) Upon request, a public safety officer may inspect the officer's own
2 personnel records at a reasonable time at the location where the records are
3 kept by the employer.

4 (b) If, after inspection, a public safety officer believes that any portion
5 of the material is mistakenly or unlawfully placed in the officer's personnel
6 records, the officer may request in writing that the mistaken or unlawful
7 material be corrected or deleted. The request must describe the corrections
8 or deletions requested and the reasons supporting the request and provide
9 any documentation that supports the request. The employer shall respond
10 within 30 days from the date the request is received. If the employer does
11 not correct or delete the material, the employer shall place the request and
12 the employer's response to the request in the officer's personnel records.

13
