

# Enrolled House Bill 2207

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Oregon Department of Administrative Services)

CHAPTER .....

AN ACT

Relating to payment of state payroll; creating new provisions; amending ORS 292.026, 292.032, 292.033, 652.110 and 652.610; and declaring an emergency.

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

**SECTION 1.** ORS 292.026 is amended to read:

292.026. (1) After preparation of the payroll, the aggregate amount as prescribed by ORS 292.024 shall be deposited in the Joint Payroll Account. The Oregon Department of Administrative Services may issue [*checks*] **payment** in the proper amount even though reimbursement funds payable to the Joint Payroll Account are not available on the date of issuance. The [*checks*] **payments** shall be drawn on the State Treasurer and be payable from the Joint Payroll Account. The [*checks*] **payments** shall be issued to:

(a) The officers and employees of the state agency who are entitled to receive payments under the payroll as allowed by the department.

(b) The persons, public or private, including persons responsible for holding or investing an officer or employee's individual retirement account, section 408, Internal Revenue Code of 1954, in effect on January 1, 1987, entitled to receive the authorized employee deductions under the payroll as allowed by the department.

(c) Banks, savings and loan associations or credit unions, including persons responsible for holding or investing an officer or employee's individual retirement account entitled to receive direct deposit of payroll [*checks*] **payments** as preauthorized by **the officer or employee**.

**(2)(a) An officer or employee paid under the state payroll system shall receive payment of net salary and wages through direct electronic deposit to a financial institution specified by the officer or employee.**

**(b) The department shall electronically provide itemized statements of payroll deductions to the recipient.**

**(c) If the department determines that the electronic payment of net salary and wages is not practicable or efficient, payment may be made by:**

**(A) Paper check; or**

**(B) A credit to a bank-issued payroll card if the employee consents to payment by a bank-issued payroll card that is made in accordance with 12 C.F.R. 1005.5 as in effect on the effective date of this 2013 Act.**

**(d) Notwithstanding paragraph (b) of this subsection, if an officer or employee wants to receive payment of net salary and wages by check or to receive a paper statement of item-**

**ized payroll deductions, the officer or employee shall request paper statements or payment by check in accordance with the procedures adopted by rule by the department.**

[2)] (3) [Checks] **Payments** issued under subsection (1)(b) or (c) of this section may be for the aggregate amount due under the payroll to the person, public or private, entitled to receive the money [or the department may utilize an automatic or electronic transfer of funds system authorized by the State Treasurer's office in lieu of issuing checks]. The department may, where monthly payments are not required, issue [checks] **payments** less frequently than monthly to the persons, public or private, entitled to receive payments under subsection (1)(b) of this section.

**SECTION 2.** ORS 292.032 is amended to read:

292.032. [Checks] **Records of payments** issued under ORS 292.026, after [having] **the payments have** been paid, shall be filed with the chief administrative officer of the state agency. [Unpresented checks] **Payments not transferred to the person entitled to receive the payment** shall be treated as [are] unpresented checks under ORS 293.450 to 293.460.

**SECTION 3.** ORS 292.033 is amended to read:

292.033. (1) As used in this section:

(a) "Regular salary advance" means any portion of the accrued salary or wages payable to an officer or employee who has filed a written request for the approval of such advance with the administrative head of the state agency by which the employee is employed.

(b) "State agency" means a state agency using the procedure provided in ORS 292.010 to 292.036.

(c) "Terminal salary or wages" means the salary or wages payable to an officer or employee who is terminating the office or employment with the state and includes cash payments made in lieu of accrued vacation time.

(2) Where a state agency does not have an alternative procedure for advances of regular salary or wages or terminal salary or wages, the Oregon Department of Administrative Services may make advances of regular salary or wages or terminal salary or wages to an officer or employee of a state agency by [check] **payments made as provided under ORS 292.026 and** drawn on the Joint Payroll Account. The provisions of ORS 292.032 apply to such [checks] **payments**. The department shall require the officer or employee to whom the advance is made to execute an assignment of regular salary or wages or terminal salary or wages in the amount of the advancement. The assignment shall be made to the department. The assignment shall have priority over any other claims against the regular salary or wages or terminal salary or wages owed to the officer or employee by the state. The department shall withhold the amount specified in the assignment from the next salaries or wages or the terminal salary or wages payable to such officer or employee, and the amount so withheld shall be credited to the Joint Payroll Account in payment of the advance made under this section.

**SECTION 4.** ORS 652.110 is amended to read:

652.110. (1) A person engaged in any business or enterprise of any kind in this state may not issue, in payment of or as evidence of indebtedness for wages due an employee, any order, check, memorandum or other instrument of indebtedness unless the instrument is negotiable and payable without discount in cash on demand at some bank or other established place of business in the county where the employee lives or works and where a sufficient amount of funds have been provided and are or will be available for the payment of the instrument when due. The person shall, upon presentation and demand, pay the instrument in lawful money of the United States.

(2) This section does not in any way limit or interfere with the right of any employee to accept from any person, as an evidence or acknowledgment of indebtedness for wages due the employee, a negotiable instrument, payable at some future date with interest.

(3) **Except as provided in ORS 292.026**, an employer and an employee may agree to authorize the employer to deposit without discount wages due the employee in the employee's account in a financial institution, as defined in ORS 706.008, in this state.

(4) **Except as provided in ORS 292.026**, an employer and an employee may agree that the employer may pay wages through a direct deposit system, automated teller machine card, payroll card or other means of electronic transfer if the employee may:

(a) Make an initial withdrawal of the entire amount of net pay without cost to the employee;  
or

(b) Choose to use another means of payment of wages that involves no cost to the employee.

(5) An agreement described in subsection (4) of this section must be made in the language that the employer principally uses to communicate with the employee.

(6)(a) Except as provided in paragraph (b) of this subsection, to revoke an agreement described in subsection (4) of this section, an employee shall give the employer a written notice of revocation of the agreement. Unless the employer and employee agree otherwise, the agreement is revoked 30 days after the date the notice is received by the employer.

(b) To revoke an agreement described in subsection (4) of this section, an employee who works for an employer as a seasonal farmworker as defined in ORS 652.145 or an employee who is employed in packing, canning, freezing or drying any variety of agricultural crops shall give the employer notice of revocation of the agreement either orally or in writing. Unless the employer and the employee agree otherwise, the agreement is revoked 10 days after the date the notice is received by the employer.

**SECTION 5.** ORS 652.610 is amended to read:

652.610. (1) All persons, firms, partnerships, associations, cooperative associations, corporations, municipal corporations, the state and its political subdivisions, except the federal government and its agencies, employing, in this state, during any calendar month one or more persons, and withholding for any purpose any sum of money from the wages, salary or commission earned by an employee, shall provide the employee on regular paydays with a statement sufficiently itemized to show the amount and purpose of the deductions made during the respective period of service that the payment covers.

(2)(a) The itemized statement shall be [*furnished*] **provided** to the employee at the time payment of wages, salary or commission is made[, *and*].

(b) **The statement** may be attached to or be a part of the check, draft, voucher or other instrument by which payment is made, or may be delivered separately from the instrument.

(c) **The statement shall be provided electronically at the time payment is made to all state officers and employees paid electronically under the state payroll system as provided by ORS 292.026.**

(d) **State agencies shall provide access to electronic statements to employees who do not have regular access to computers in their workplace.**

(e) **Notwithstanding paragraph (c) of this subsection, if an officer or employee paid under the state payroll system as provided by ORS 292.026 wants to receive payment of net salary and wages by check or to receive a paper statement of itemized payroll deductions, the officer or employee shall request paper statements or payment by check in accordance with the procedures adopted by rule by the department.**

(3) An employer may not withhold, deduct or divert any portion of an employee's wages unless:

(a) The employer is required to do so by law;

(b) The deductions are authorized in writing by the employee, are for the employee's benefit and are recorded in the employer's books;

(c) The employee has voluntarily signed an authorization for a deduction for any other item, provided that the ultimate recipient of the money withheld is not the employer and that the deduction is recorded in the employer's books;

(d) The deduction is authorized by a collective bargaining agreement to which the employer is a party;

(e) The deduction is authorized under ORS 18.736; or

(f) The deduction is made from the payment of wages upon termination of employment and is authorized pursuant to a written agreement between the employee and employer for the repayment of a loan made to the employee by the employer, if all of the following conditions are met:

(A) The employee has voluntarily signed the agreement;

(B) The loan was paid to the employee in cash or other medium permitted by ORS 652.110;

(C) The loan was made solely for the employee's benefit and was not used, either directly or indirectly, for any purpose required by the employer or connected with the employee's employment with the employer;

(D) The amount of the deduction at termination of employment does not exceed the amount permitted to be garnished under ORS 18.385; and

(E) The deduction is recorded in the employer's books.

(4) When an employer deducts an amount from an employee's wages as required or authorized by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as required by the law or agreement. The employer shall pay the amount deducted within the time required by the law or the agreement or, if the time for payment is not specified by the law or agreement, within seven days after the date the wages from which the deductions are made are due. Failure to pay the amount as required constitutes an unlawful deduction.

(5) This section does not:

(a) Prohibit the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations, including contributions made pursuant to ORS 243.666 and 663.110;

(b) Prohibit deductions by checkoff dues to labor organizations or service fees when the deductions are not otherwise prohibited by law; or

(c) Diminish or enlarge the right of any person to assert and enforce a lawful setoff or counterclaim or to attach, take, reach or apply an employee's compensation on due legal process.

**SECTION 6. The amendments to ORS 292.026, 292.032, 292.033, 652.110 and 652.610 by sections 1 to 5 of this 2013 Act become operative on January 1, 2014.**

**SECTION 6a. If House Bill 2683 becomes law, section 4 of this 2013 Act (amending ORS 652.110) is repealed.**

**SECTION 6b.** If House Bill 2683 becomes law, section 6 of this 2013 Act is amended to read:

**Sec. 6.** The amendments to ORS 292.026, 292.032, 292.033[, 652.110] and 652.610 by sections 1 to 3 and 5 of this 2013 Act become operative on January 1, 2014.

**SECTION 7. The Director of the Oregon Department of Administrative Services may take any action before the operative date specified in section 6 of this 2013 Act that is necessary to enable the department to exercise, on and after the operative date specified in section 6 of this 2013 Act, all the duties, functions and powers conferred on the department by this 2013 Act.**

**SECTION 8. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

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**Passed by House April 17, 2013**

**Repassed by House June 6, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 4, 2013**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

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Kate Brown, Secretary of State