

House Bill 3142

Sponsored by COMMITTEE ON BUSINESS AND LABOR (at the request of Northwest Workers' Justice Project)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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 provisions; and amending ORS
3 652.310, 652.320, 652.750, 653.010, 658.005, 658.405 and 701.005.

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

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

6 652.310. As used in ORS 652.310 to 652.414, unless the context requires otherwise:

7 (1) **"Employ":**

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

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

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

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

16 (2) **"Employee" means any individual employed by an employer in this state. An individual**
17 **performing services that are an integral part of the business of another is presumed to be**
18 **an employee unless the individual is customarily engaged in an independently established**
19 **business of the same nature as that involved in the services performed.**

20 [(1)] (3)(a) **"Employer" means** *[any person who in this state, directly or through an agent, engages*
21 *personal services of one or more employees and includes any successor to the business of any employer,*
22 *or any lessee or purchaser of any employer's business property for the continuance of the same busi-*
23 *ness, so far as such employer has not paid employees in full. "Employer" includes the State of Oregon*
24 *or any political subdivision thereof or any county, city, district, authority, public corporation or entity*
25 *and any of their instrumentalities organized and existing under law or charter but];*

26 (A) **Any person or a public body as defined in ORS 174.109, that employs an individual,**
27 **and any other person acting directly or indirectly in the interest of an employer in relation**
28 **to an employee; and**

29 (B) **To the extent an employer has not paid employees in full, any successor to the busi-**
30 **ness of the employer or a purchaser of the employer's property for the continuance of the**

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 **same business.**

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

3 *[(a)]* (A) The United States **Government.**

4 *[(b)]* (B) Trustees and assignees in bankruptcy or insolvency, and receivers, whether appointed
5 by federal or state courts, and persons otherwise falling under the definition of employers so far as
6 the times or amounts of their payments to employees are regulated by laws of the United States,
7 or regulations or orders made in pursuance thereof.

8 *[(2) “Employee” means any individual who otherwise than as copartner of the employer or as an
9 independent contractor renders personal services wholly or partly in this state to an employer who pays
10 or agrees to pay such individual at a fixed rate, based on the time spent in the performance of such
11 services or on the number of operations accomplished, or quantity produced or handled. However:]*

12 *[(a) Where services are rendered by an independent contractor, an individual shall not be an em-
13 ployee under this section unless the individual is a musician or supporting technical person.]*

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

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

18 652.320. As used in ORS 652.310 to 652.414, unless the context requires otherwise:

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

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

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

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

30 (5) “Payment” means the delivery, tender or deposit of compensation in the medium of payment
31 described in subsection (4) of this section. Such delivery, tender or deposit shall be made to or for
32 the account of the employee concerned or to or for the account of any person having due authority
33 to act in said employee’s behalf.

34 (6) “Rate of payment” means the rate at which payment is made or is to be made in the manner
35 described in this section.

36 (7) “Wage claim” means an employee’s claim against an employer for compensation for the
37 employee’s own personal services, and includes any wages, compensation, damages or civil penalties
38 provided by law to employees in connection with a claim for unpaid wages.

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

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

45 653.010. As used in ORS 653.010 to 653.261, unless the context requires otherwise:

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

2 (2) “Employ” includes to suffer or permit to work but does not include voluntary or donated
 3 services performed for no compensation or without expectation or contemplation of compensation
 4 as the adequate consideration for the services performed for a public [*employer referred to in sub-*
 5 *section (3) of this section*] **body as defined in ORS 174.109**, or a religious, charitable, educational,
 6 public service or similar nonprofit corporation, organization or institution for community service,
 7 religious or humanitarian reasons or for services performed by general or public assistance recipi-
 8 ents as part of any work training program administered under the state or federal assistance laws.

9 (3) **“Employee” means an individual employed by an employer in this state. An individual
 10 who performs services that are an integral part of the business of another person for
 11 remuneration is presumed to be an employee unless the individual who performs the services
 12 for another person is customarily engaged in an independently established business of the
 13 same nature as the business of the person for whom the services are performed.**

14 [(3)] (4)(a) “Employer” means [*any person who employs another person including the State of
 15 Oregon or a political subdivision thereof or any county, city, district, authority, public corporation or
 16 entity and any of their instrumentalities organized and existing under law or charter.*]:

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

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

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

24 [(4)] (5) “Minor” means any person under 18 years of age.

25 [(5)] (6) “Occupation” means any occupation, service, trade, business, industry, or branch or
 26 group of industries or employment or class of employment in which employees are gainfully em-
 27 ployed.

28 [(6)] (7) “Organized camp” means a day or resident camp, whether or not operated for profit,
 29 established to give campers recreational, creative, religious or educational experience in cooperative
 30 group living wherein the activities are conducted on a closely supervised basis, whether or not the
 31 camp is used primarily by an organized group or by members of the public and whether or not the
 32 activities or facilities are furnished free of charge or for the payment of a fee.

33 [(7)] (8) “Outside salesperson” means any employee who is employed for the purpose of and who
 34 is customarily and regularly engaged away from the employer’s place or places of business in mak-
 35 ing sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any
 36 other nature for the employer do not exceed 30 percent of the hours worked in the workweek by the
 37 nonexempt employees of the employer.

38 [(8)] (9) “Piece-rate” means a rate of pay calculated on the basis of the quantity of the crop
 39 harvested.

40 [(9)] (10) “Salary” means no less than the wage set pursuant to ORS 653.025, multiplied by 2,080
 41 hours per year, then divided by 12 months.

42 [(10)] (11) “Wages” means [*compensation due to an employee by reason of employment*] **all com-
 43 pensation for performance of service by an employee for an employer, including penalty
 44 wages owed under ORS 652.150, whether paid by the employer or another person, payable in
 45 legal tender of the United States or check on banks convertible into cash on demand at full face**

1 value, subject to [such] deductions, charges or allowances as are permitted in ORS 653.035.

2 [(11)] (12) "Work time" includes both time worked and time of authorized attendance.

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

4 658.005. As used in ORS 658.005 to 658.245, unless the context requires otherwise:

5 (1) "Applicant for employment" or "applicant" means an individual who is seeking or who has
6 obtained employment through the services of an employment agency.

7 (2) "Charge for services" means any money or other consideration paid or promised to be paid
8 by an applicant for employment for services rendered by an employment agency.

9 (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

10 (4) **"Employ" has the meaning given that term in ORS 653.010.**

11 (5) **"Employee" has the meaning given that term in ORS 653.010.**

12 (6) **"Employer" has the meaning given that term in ORS 653.010.**

13 [(4)(a)] (7)(a) "Employment agency" or "agency" means a business, service, bureau or club op-
14 erated by a person, firm, organization, limited liability company or corporation engaged in procuring
15 for a fee, employment for others and employees for employers.

16 (b) "Employment agency" or "agency" does not include:

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

18 (B) Any business, person, service, bureau, organization or club that by advertisement or other-
19 wise offers as its main object or purpose to counsel, teach or prepare individuals to obtain employ-
20 ment, and which charges for its services, whether in the form of dues, tuition, membership fees,
21 registration fees or any other valuable service.

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

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

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

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

28 658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires
29 otherwise:

30 (1) "Agricultural association" means a nonprofit or cooperative association of farmers, growers
31 or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor
32 solely on behalf of members of the association.

33 (2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

34 (3) "Crew leader" means the member of a group of workers who (a) acts as spokesman for the
35 group, (b) travels with the group from another state into Oregon and (c) performs the same work
36 along with other group members. A crew leader may transport workers from their local place of
37 residence to their place of employment so long as the crew leader does not perform this service for
38 a profit.

39 (4) **"Employ" has the meaning given that term in ORS 653.010.**

40 (5) **"Employee" has the meaning given that term in ORS 653.010.**

41 (6) **"Employer" has the meaning given that term in ORS 653.010.**

42 [(4)] (7) "Farm labor contractor" means any person who, for an agreed remuneration or rate of
43 pay, recruits, solicits, supplies or employs workers to perform labor for another to work in fore-
44 station or reforestation of lands, including but not limited to the planting, transplanting, tubing,
45 precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of

1 brush and slash and other related activities or the production or harvesting of farm products; or
 2 who recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear
 3 grass, salal or ferns from public lands for sale or market prior to processing or manufacture; or who
 4 recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities;
 5 or who, in connection with the recruitment or employment of workers to work in these activities,
 6 furnishes board or lodging for such workers; or who bids or submits prices on contract offers for
 7 those activities; or who enters into a subcontract with another for any of those activities. However,
 8 “farm labor contractor” does not include:

9 (a) Farmers, including owners or lessees of land intended to be used for the production of tim-
 10 ber, their permanent employees, advertising media, platoon leaders or individuals engaged in the
 11 solicitation or recruitment of persons for dayhaul work in connection with the growing, production
 12 or harvesting of farm products;

13 (b) The Employment Department;

14 (c) A crew leader;

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

18 (e) Individuals who perform labor pursuant to an agreement for exchanging their own labor or
 19 services with each other, provided the work is performed on land owned or leased by the individuals;

20 (f) An educational institution that is recognized as such by the Department of Education; or

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

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

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

27 701.005. As used in this chapter:

28 (1) “Board” means the Construction Contractors Board.

29 (2) “Commercial contractor” means a licensed contractor that holds an endorsement as a:

30 (a) Commercial general contractor level 1;

31 (b) Commercial specialty contractor level 1;

32 (c) Commercial general contractor level 2;

33 (d) Commercial specialty contractor level 2; or

34 (e) Commercial developer.

35 (3) “Commercial developer” means a developer of property that is zoned for or intended for use
 36 compatible with a small commercial or large commercial structure.

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

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

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

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

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

44 (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers
 45 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,

1 move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other
 2 structure, project, development or improvement attached to real estate, or to do any part thereof.

3 (b) A person that purchases or owns property and constructs or for compensation arranges for
 4 the construction of one or more residential structures or small commercial structures with the in-
 5 tent of selling the structures.

6 (c) A school district, as defined in ORS 332.002, that permits students to construct a residential
 7 structure or small commercial structure as an educational experience to learn building techniques
 8 and sells the completed structure.

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

12 (e) A person except a landscape contracting business, nurseryman, gardener or person engaged
 13 in the commercial harvest of forest products, that is engaged as an independent contractor to re-
 14 move trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

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

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

19 (6) “Developer” means a contractor that owns property or an interest in property and engages
 20 in the business of arranging for construction work or performing other activities associated with the
 21 improvement of real property, with the intent to sell the property.

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

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

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

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

29 (b) “General contractor” does not mean a specialty contractor or a residential limited contrac-
 30 tor.

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

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

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

37 (C) Modular home constructed off-site;

38 (D) Manufactured dwelling; or

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

40 (b) “Home improvement” does not include a renovation, remodel, repair or alteration by a resi-
 41 dential contractor:

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

44 (B) That the residential contractor performed in the course of constructing a new residential
 45 structure.

1 [(9)(a)] **(12)(a)** “Home inspector” means a person who, for a fee, inspects and provides written
 2 reports on the overall physical condition of a residential structure.

3 (b) “Home inspector” does not include persons certified under ORS chapter 455 to inspect new,
 4 repaired or altered structures for compliance with the state building code.

5 [(10)] **(13)** “Key employee” means an employee or owner of a contractor who is a corporate of-
 6 ficer, manager, superintendent, foreperson or lead person or any other employee the board identifies
 7 by rule.

8 [(11)] **(14)** “Large commercial structure” means a structure that is not a residential structure
 9 or small commercial structure.

10 [(12)] **(15)** “Officer” means any of the following persons:

11 (a) A president, vice president, secretary, treasurer or director of a corporation.

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

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

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

15 (e) A trustee.

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

19 [(13)] **(16)** “Residential contractor” means a licensed contractor that holds an endorsement as
 20 a:

21 (a) Residential general contractor;

22 (b) Residential specialty contractor;

23 (c) Residential limited contractor; or

24 (d) Residential developer.

25 [(14)] **(17)** “Residential developer” means a developer of property that is zoned for or intended
 26 for use compatible with a residential or small commercial structure.

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

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

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

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

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

34 (E) A manufactured dwelling;

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

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

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

39 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
 40 nonresidential units;

41 (B) Transient lodging;

42 (C) A residential school or residence hall;

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

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

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

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

4 (H) A nursing home;

5 (I) A hospital; or

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

7 [(16)] (19) "Responsible managing individual" means an individual who:

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

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

11 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122
12 within a period the board identifies by rule;

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

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

15 [(17)] (20) "Small commercial structure" means:

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

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

23 (c) A nonresidential structure of any size for which the contract price of all construction con-
24 tractor work to be performed on the structure as part of a construction project does not total more
25 than \$250,000; or

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

27 [(18)] (21) "Specialty contractor" means a contractor who performs work on a structure, project,
28 development or improvement and whose operations as such do not fall within the definition of
29 "general contractor." "Specialty contractor" includes a person who performs work regulated under
30 ORS 446.395.

31 [(19)] (22) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of
32 attached units in which:

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

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

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

37 701.005. As used in this chapter:

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

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

40 (a) Commercial general contractor level 1;

41 (b) Commercial specialty contractor level 1;

42 (c) Commercial general contractor level 2;

43 (d) Commercial specialty contractor level 2; or

44 (e) Commercial developer.

45 (3) "Commercial developer" means a developer of property that is zoned for or intended for use

1 compatible with a small commercial or large commercial structure.

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

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

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

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

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

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

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

9 (c) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

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

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

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

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

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

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

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

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

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

19 (b) "General contractor" does not mean a specialty contractor or a residential limited contractor.

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

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

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

1 larger structure;

2 (C) Modular home constructed off-site;

3 (D) Manufactured dwelling; or

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

5 (b) "Home improvement" does not include a renovation, remodel, repair or alteration by a resi-
6 dential contractor:

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

9 (B) That the residential contractor performed in the course of constructing a new residential
10 structure.

11 [(9)(a)] (12)(a) "Home inspector" means a person who, for a fee, inspects and provides written
12 reports on the overall physical condition of a residential structure.

13 (b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new,
14 repaired or altered structures for compliance with the state building code.

15 [(10)] (13) "Key employee" means an employee or owner of a contractor who is a corporate of-
16 ficer, manager, superintendent, foreperson or lead person or any other employee the board identifies
17 by rule.

18 [(11)] (14) "Large commercial structure" means a structure that is not a residential structure
19 or small commercial structure.

20 [(12)] (15) "Officer" means any of the following persons:

21 (a) A president, vice president, secretary, treasurer or director of a corporation.

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

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

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

25 (e) A trustee.

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

29 [(13)] (16) "Residential contractor" means a licensed contractor that holds an endorsement as
30 a:

31 (a) Residential general contractor;

32 (b) Residential specialty contractor;

33 (c) Residential limited contractor; or

34 (d) Residential developer.

35 [(14)] (17) "Residential developer" means a developer of property that is zoned for or intended
36 for use compatible with a residential or small commercial structure.

37 [(15)(a)] (18)(a) "Residential structure" means:

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

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

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

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

44 (E) A manufactured dwelling;

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

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

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

4 (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and
5 nonresidential units;

6 (B) Transient lodging;

7 (C) A residential school or residence hall;

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

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

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

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

14 (H) A nursing home;

15 (I) A hospital; or

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

17 [(16)] (19) "Responsible managing individual" means an individual who:

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

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

21 (c)(A) Successfully completed the training and testing required for licensing under ORS 701.122
22 within a period the board identifies by rule;

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

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

25 [(17)] (20) "Small commercial structure" means:

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

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

33 (c) A nonresidential structure of any size for which the contract price of all construction con-
34 tractor work to be performed on the structure as part of a construction project does not total more
35 than \$250,000; or

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

37 [(18)] (21) "Specialty contractor" means a contractor who performs work on a structure, project,
38 development or improvement and whose operations as such do not fall within the definition of
39 "general contractor." "Specialty contractor" includes a person who performs work regulated under
40 ORS 446.395.

41 [(19)] (22) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of
42 attached units in which:

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

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

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

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

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

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

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

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

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

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

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

9 652.750. (1) As used in this section:

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

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

12 [(a)] (c) **“Employer” has the meaning given that term in ORS [656.005] 653.010.**

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

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

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

24 (3) Upon termination of employment, the employer shall keep the terminated employee’s per-
 25 sonnel records for not less than 60 days. Within the 60-day period, the employer shall provide the
 26 employee with a certified copy of the records within 45 days of receiving the employee’s request.
 27 After the 60-day period, the employer shall provide the certified copy within 45 days of receiving the
 28 employee’s request if the employer has the records at the time of the request.

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

33 (5) For the services referred to in subsections (2) and (3) of this section only, an employer may
 34 charge an employee no more than an amount reasonably calculated to recover the actual cost of
 35 providing the services.

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

39 (b) If a public safety officer refuses to sign a document containing an adverse comment, the
 40 employer may place the document in the officer’s personnel records with a notation that the docu-
 41 ment was presented to the officer and the officer refused to sign it.

42 (c) If a public safety officer is not available to read and sign the document containing an adverse
 43 comment at the work location where the personnel files are maintained, the employer may place the
 44 document in the officer’s personnel records and mail a copy of the document to the officer by reg-
 45 ular mail or interoffice mail.

1 (d) A public safety officer may write a response within 30 days of being presented with a docu-
2 ment containing an adverse comment. If a public safety officer writes a response to a document
3 containing an adverse comment, the response must be attached to the original document and placed
4 in the officer's personnel records.

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

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

14