

D R A F T

SUMMARY

Defines “wages” for certain wage claims. Requires employer to maintain time and pay records of terminated employee for three years from date of termination, to provide records to employee if requested and to provide employee with written statement of reasons for termination.

Modifies information that must be included in itemized statement provided to employee each pay period.

Establishes civil right of action for certain claims for unpaid wages and for violation of certain wage statutes. Specifies procedures for establishing lien for amount of unpaid wages. Authorizes Commissioner of Bureau of Labor and Industries to void notice of lien if commissioner determines that employee has failed to establish prima facie case for wage claim.

Prohibits waiver of rights established under Act. Prohibits discrimination by employer against employee for certain actions taken by employee related to wage claims.

A BILL FOR AN ACT

1
2 Relating to regulation of employment; creating new provisions; and amending
3 ORS 652.320, 652.610, 652.750, 653.010, 653.055, 658.005 and 658.405.

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

5 **SECTION 1.** ORS 653.010 is amended to read:

6 653.010. As used in ORS 653.010 to 653.261, unless the context requires
7 otherwise:

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

10 (2) “Employ” includes to suffer or permit to work but does not include
11 voluntary or donated services performed for no compensation or without ex-
12 pectation or contemplation of compensation as the adequate consideration
13 for the services performed for a public employer referred to in subsection (3)

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 of this section, or a religious, charitable, educational, public service or sim-
2 ilar nonprofit corporation, organization or institution for community service,
3 religious or humanitarian reasons or for services performed by general or
4 public assistance recipients as part of any work training program adminis-
5 tered under the state or federal assistance laws.

6 **(3) “Employee” means an individual employed by an employer in**
7 **this state.**

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

12 [(4)] (5) “Minor” means any person under 18 years of age.

13 [(5)] (6) “Occupation” means any occupation, service, trade, business, in-
14 dustry, or branch or group of industries or employment or class of employ-
15 ment in which employees are gainfully employed.

16 [(6)] (7) “Organized camp” means a day or resident camp, whether or not
17 operated for profit, established to give campers recreational, creative, reli-
18 gious or educational experience in cooperative group living wherein the ac-
19 tivities are conducted on a closely supervised basis, whether or not the camp
20 is used primarily by an organized group or by members of the public and
21 whether or not the activities or facilities are furnished free of charge or for
22 the payment of a fee.

23 [(7)] (8) “Outside salesperson” means any employee who is employed for
24 the purpose of and who is customarily and regularly engaged away from the
25 employer’s place or places of business in making sales, or obtaining orders,
26 or obtaining contracts for services and whose hours of work of any other
27 nature for the employer do not exceed 30 percent of the hours worked in the
28 workweek by the nonexempt employees of the employer.

29 [(8)] (9) “Piece-rate” means a rate of pay calculated on the basis of the
30 quantity of the crop harvested.

31 [(9)] (10) “Salary” means no less than the wage set pursuant to ORS

1 653.025, multiplied by 2,080 hours per year, then divided by 12 months.

2 [(10)] (11) “Wages” means [*compensation due to an employee by reason of*
3 *employment*] **all compensation for performance of service by an em-**
4 **ployee for an employer, whether paid by the employer or another per-**
5 **son**, payable in legal tender of the United States or check on banks
6 convertible into cash on demand at full face value, subject to such de-
7 ductions, charges or allowances as are permitted in ORS 653.035. **“Wages”**
8 **includes, but is not limited to, gratuities or similar payments for the**
9 **provision of services and penalty wages owed under ORS 652.150.**

10 [(11)] (12) “Work time” includes both time worked and time of authorized
11 attendance.

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

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

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

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

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

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

30 (5) “Payment” means the delivery, tender or deposit of compensation in
31 the medium of payment described in subsection (4) of this section. Such de-

1 livery, tender or deposit shall be made to or for the account of the employee
2 concerned or to or for the account of any person having due authority to act
3 in said employee's behalf.

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

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

10 **(8) "Wages" means all compensation for performance of service by**
11 **an employee for an employer, whether paid by the employer or another**
12 **person, payable in legal tender of the United States or check on banks**
13 **convertible into cash on demand at full face value, subject to such**
14 **deductions, charges or allowances as are permitted in ORS 653.035.**
15 **"Wages" includes, but is not limited to, gratuities or similar payments**
16 **for the provision of services and penalty wages owed under ORS**
17 **652.150.**

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

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

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

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

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

29 (4)(a) "Employment agency" or "agency" means a business, service, bureau
30 or club operated by a person, firm, organization, limited liability company
31 or corporation engaged in procuring for a fee, employment for others and

1 employees for employers.

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

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

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

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

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

14 **(5) "Wages" has the meaning given that term in ORS 653.010.**

15 **SECTION 4.** ORS 658.405, as amended by section 1, chapter 584, Oregon
16 Laws 2013, is amended to read:

17 658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless
18 the context requires otherwise:

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

23 (2)(a) "Construction labor contractor" includes any person that:

24 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies
25 or employs workers to perform labor for another in construction;

26 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies
27 or employs workers on behalf of an employer engaged in construction; or

28 (C) Enters into a subcontract with another for any of the activities de-
29 scribed in subparagraph (A) or (B) of this paragraph.

30 (b) "Construction labor contractor" does not include:

31 (A) A person that has a construction contract with an owner of real

1 property where the construction work is performed;

2 (B) A person that has obtained building permits to perform construction
3 work;

4 (C) A person that supplies building materials or machinery, other than
5 manual tools or hand-operated power tools, for a construction project;

6 (D) An owner of real property engaged in the solicitation or recruitment
7 of persons to perform construction work on the owner's property;

8 (E) The Employment Department;

9 (F) A crew leader;

10 (G) Individuals who perform labor pursuant to an agreement for ex-
11 changing their own labor or services with each other, provided the work is
12 performed on land owned or leased by the individuals;

13 (H) An educational institution that is recognized as such by the Depart-
14 ment of Education;

15 (I) A labor union;

16 (J) A local joint apprenticeship committee formed under ORS 660.135; or

17 (K) A staffing agency whose primary purpose is to provide workers to the
18 client employers of the agency under the terms of a client agreement, if the
19 agency provides workers' compensation coverage for all employees as re-
20 quired by ORS chapter 656 and pays employment and income taxes in ac-
21 cordance with applicable law.

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

28 (4)(a) "Farm labor contractor" includes any person that:

29 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies
30 or employs workers to perform labor for another person to work in fore-
31 station or reforestation of lands, including but not limited to the planting,

1 transplanting, tubing, precommercial thinning and thinning of trees and
2 seedlings, the clearing, piling and disposal of brush and slash and other re-
3 lated activities;

4 (B) For an agreed remuneration or rate of pay, recruits, solicits, supplies
5 or employs workers to perform labor for another person in the production
6 or harvesting of farm products;

7 (C) Recruits, solicits, supplies or employs workers to gather evergreen
8 boughs, yew bark, bear grass, salal or ferns from public lands for sale or
9 market prior to processing or manufacture;

10 (D) Recruits, solicits, supplies or employs workers on behalf of an em-
11 ployer engaged in these activities;

12 (E) In connection with the recruitment or employment of workers to work
13 in these activities, furnishes board or lodging for such workers;

14 (F) Bids or submits prices on contract offers for those activities; or

15 (G) Enters into a subcontract with another for any of those activities.

16 (b) "Farm labor contractor" does not include:

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

22 (B) The Employment Department;

23 (C) A crew leader;

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

28 (E) Individuals who perform labor pursuant to an agreement for ex-
29 changing their own labor or services with each other, provided the work is
30 performed on land owned or leased by the individuals;

31 (F) An educational institution that is recognized as such by the Depart-

1 ment of Education;

2 (G) A farmer who operates a farmworker camp, regulated under ORS
3 658.750, who recruits, supplies, solicits or employs workers only for the
4 farmer's own operations, and has farmworkers living in the camp who are
5 employed by another on no more than an incidental basis, and the farmer
6 receives no remuneration by virtue of such incidental employment; or

7 (H) A labor union.

8 (5) "Labor contractor" means a construction labor contractor or a farm
9 labor contractor.

10 **(6) "Wages" has the meaning given that term in ORS 653.010.**

11 **SECTION 5.** ORS 652.750 is amended to read:

12 652.750. (1) As used in this section:

13 (a) "Employer" has the meaning given that term in ORS 656.005.

14 (b) "Personnel records" does not include records of an individual relating
15 to the conviction, arrest or investigation of conduct constituting a violation
16 of the criminal laws of this state or another state or the United States,
17 confidential reports from previous employers or records maintained in com-
18 pliance with ORS 351.065.

19 (c) "Public safety officer" has the meaning given that term in ORS
20 236.350.

21 **(d) "Time and pay records" means any documents that record the**
22 **times an employee started or stopped work, rest and meal periods re-**
23 **ceived or total hours worked, documents required under ORS 652.610**
24 **and any other documents used to determine the gross or net wages**
25 **of an employee.**

26 (2) Except as provided in subsection [(7)] **(9)** of this section, within 45
27 days after receipt of an employee's request, an employer shall provide rea-
28 sonable opportunity for the employee to inspect, at the place of employment
29 or place of work assignment, the personnel records of the employee that are
30 used or have been used to determine the employee's qualification for em-
31 ployment, promotion, additional compensation [or], employment termination

1 or other disciplinary action **and time and pay records of the employee.**
2 Within 45 days after receipt of the employee's request, the employer shall
3 furnish a certified copy of the records.

4 (3) Upon termination of employment, the employer shall keep:

5 (a) The terminated employee's personnel records for not less than 60 days.
6 Within the 60-day period, the employer shall provide the employee with a
7 certified copy of the records within 45 days of receiving the employee's re-
8 quest. After the 60-day period, the employer shall provide the certified copy
9 within 45 days of receiving the employee's request if the employer has the
10 records at the time of the request.

11 (b) **The terminated employee's time and pay records for not less**
12 **than three years. The employer shall provide the employee with a**
13 **certified copy of the employee's time and pay records within 45 days**
14 **of receiving the employee's request. After the three-year period, the**
15 **employer shall provide the certified copy within 45 days of receiving**
16 **the employee's request if the employer has the records at the time of**
17 **the request.**

18 (4) Notwithstanding the time periods described in subsections (2) and (3)
19 of this section, if the employee's personnel records **or time and pay records**
20 are not readily available, the employer and the employee may agree to extend
21 the time within which the employer must provide the employee reasonable
22 opportunity to inspect the records or furnish the employee a certified copy
23 of the records.

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

27 (6) **Upon receipt of a written request from a terminated employee,**
28 **an employer shall provide to the employee a full, succinct and com-**
29 **plete written statement of the reason or reasons for the termination**
30 **of the employee. The statement shall be provided to the employee**
31 **within 10 days after the request has been made.**

1 **(7) Except by agreement between the employer and a terminated**
2 **employee, an employer may not make or furnish to any person a**
3 **statement with respect to the reason for the termination of the em-**
4 **ployee that materially differs from the reason provided to the em-**
5 **ployee in the statement required under subsection (6) of this section.**
6 **Nothing in this subsection prevents an employer from declining to**
7 **provide a reason for termination of an employee to third parties.**

8 [(6)(a)] **(8)(a)** Except as provided in paragraphs (b) and (c) of this sub-
9 section, an employer may not place an adverse comment in the personnel
10 records of a public safety officer unless the officer has first read and signed
11 the document containing the adverse comment.

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

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

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

26 [(7)(a)] **(9)(a)** Upon request, a public safety officer may inspect the
27 officer's own personnel records at a reasonable time at the location where
28 the records are kept by the employer.

29 (b) If, after inspection, a public safety officer believes that any portion
30 of the material is mistakenly or unlawfully placed in the officer's personnel
31 records, the officer may request in writing that the mistaken or unlawful

1 material be corrected or deleted. The request must describe the corrections
2 or deletions requested and the reasons supporting the request and provide
3 any documentation that supports the request. The employer shall respond
4 within 30 days from the date the request is received. If the employer does
5 not correct or delete the material, the employer shall place the request and
6 the employer's response to the request in the officer's personnel records.

7 **SECTION 6.** ORS 653.055 is amended to read:

8 653.055. (1) Any employer who pays an employee less than the wages to
9 which the employee is entitled under ORS 653.010 to 653.261 **by the regular**
10 **payday established by the employer as required by ORS 652.120** is liable
11 to the employee affected:

12 (a) For the full amount of the wages, less any amount actually paid to the
13 employee by the employer; and

14 (b) For civil penalties **calculated as** provided in ORS 652.150.

15 (2) Any agreement between an employee and an employer to work at less
16 than the wage rate required by ORS 653.010 to 653.261 is no defense to an
17 action under subsection (1) of this section.

18 (3) The Commissioner of the Bureau of Labor and Industries has the same
19 powers and duties in connection with a wage claim based on ORS 653.010 to
20 653.261 as the commissioner has under ORS 652.310 to 652.445 and in addition
21 the commissioner may, without the necessity of assignments of wage claims
22 from employees, initiate suits against employers to enjoin future failures to
23 pay required minimum wages or overtime pay and to require the payment
24 of minimum wages and overtime pay due employees but not paid as of the
25 time of the filing of suit. The commissioner may join in a single proceeding
26 and in one cause of suit any number of wage claims against the same em-
27 ployer. If the commissioner does not prevail in such action, the commissioner
28 shall pay all costs and disbursements from the Bureau of Labor and Indus-
29 tries Account.

30 (4) The court may award reasonable attorney fees to [*the*] a prevailing
31 [*party*] **plaintiff** in any action brought by an employee under this section.

1 **SECTION 7.** ORS 652.610 is amended to read:

2 652.610. (1)(a) All persons, firms, partnerships, associations, cooperative
3 associations, corporations, municipal corporations, the state and its political
4 subdivisions, except the federal government and its agencies, employing, in
5 this state, during any calendar month one or more persons, and withholding
6 for any purpose any sum of money from the wages, salary or commission
7 earned by an employee, shall provide the employee on regular paydays with
8 a statement sufficiently itemized [*to show the amount and purpose of the de-*
9 *ductions made during the respective period of service that the payment*
10 *covers*] **as described in paragraph (b) of this subsection.**

11 **(b) The statement required under this subsection must be a written**
12 **statement sufficiently itemized to show:**

13 **(A) The dates of work covered by that payment of wages;**

14 **(B) The name of the employee;**

15 **(C) The name and tax identification number of the employer;**

16 **(D) The address and telephone number of the employer;**

17 **(E) The rate or rates of pay;**

18 **(F) Whether the employee is paid by the hour, shift, day or week**
19 **or on a salary, piece or commission basis;**

20 **(G) Gross wages;**

21 **(H) Net wages;**

22 **(I) The amount and purpose of each deduction made during the re-**
23 **spective period of service that the payment covers;**

24 **(J) Allowances, if any, claimed as part of minimum wage;**

25 **(K) Unless the employee is paid on a salary basis and is exempt**
26 **from overtime compensation as established by local, state and federal**
27 **law, the regular hourly rate or rates of pay, the overtime rate or rates**
28 **of pay, the number of regular hours worked and pay for those hours**
29 **and the number of overtime hours worked and pay for those hours;**
30 **and**

31 **(L) If the employee is paid a piece rate, the applicable piece rate**

1 **or rates of pay, the number of pieces completed at each piece rate and**
2 **the total pay for each rate.**

3 (2)(a) The itemized statement shall be provided to the employee at the
4 time payment of wages, salary or commission is made.

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

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

11 (d) State agencies shall provide access to electronic statements to em-
12 ployees who do not have regular access to computers in their workplace.

13 (e) Notwithstanding paragraph (c) of this subsection, if an officer or em-
14 ployee paid under the state payroll system as provided by ORS 292.026 wants
15 to receive payment of net salary and wages by check or to receive a paper
16 statement of itemized payroll deductions, the officer or employee shall re-
17 quest paper statements or payment by check in accordance with the proce-
18 dures adopted by rule by the **Oregon Department of Administrative**
19 **Services.**

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

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

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

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

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

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

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

5 (A) The employee has voluntarily signed the agreement;

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

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

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

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

14 (4) When an employer deducts an amount from an employee's wages as
15 required or authorized by law or agreement, the employer shall pay the
16 amount deducted to the appropriate recipient as required by the law or
17 agreement. The employer shall pay the amount deducted within the time re-
18 quired by the law or the agreement or, if the time for payment is not speci-
19 fied by the law or agreement, within seven days after the date the wages
20 from which the deductions are made are due. Failure to pay the amount as
21 required constitutes an unlawful deduction.

22 (5) This section does not:

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

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

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

31 **SECTION 8. (1)(a) An employee has a right of civil action for a**

1 **claim for unpaid wages, as defined in ORS 653.010, against an employer**
2 **in the full amount of the employee's unpaid wages due as provided**
3 **under ORS 652.110, 652.120, 652.130, 652.140, 652.145, 652.150, 652.160,**
4 **652.170, 652.190, 652.200, 652.220, 652.230, 652.240, 652.250, 652.260 and**
5 **653.055. An employee may bring an action under this section against**
6 **an employer without first filing a claim for unpaid wages with the**
7 **Bureau of Labor and Industries under ORS 652.310 to 652.414.**

8 **(b) An employee who has a claim against an employer under this**
9 **section or the assignee of an employee who has filed a wage claim with**
10 **the Commissioner of the Bureau of Labor and Industries may file a**
11 **notice of lis pendens upon all property of the employer, real and per-**
12 **sonal, located in this state for the amount of the unpaid wages to**
13 **which the employee claims to be entitled. With respect to real prop-**
14 **erty the notice may be filed with the county clerk of the county in**
15 **which the real property is located. With respect to personal property**
16 **the notice may be filed with the Secretary of State. Upon receipt of**
17 **the notice, any required filing fee and proof of service upon the em-**
18 **ployer by certified mail:**

19 **(A) The county clerk shall enter the notice of lis pendens in the**
20 **County Clerk Lien Record.**

21 **(B) The Secretary of State shall include the notice of lis pendens**
22 **that is filed under this subsection in the index maintained by the sec-**
23 **retary for filing financing statements pursuant to ORS chapter 79.**

24 **(2) A notice of lis pendens under subsection (1) of this section must**
25 **be a written statement that:**

26 **(a) Includes a declaration that the notice is made under penalty of**
27 **perjury as described in ORCP 1 E;**

28 **(b) Is filed under subsection (1)(b) of this section within two years**
29 **after the date on which wages for the final pay period were due; and**

30 **(c) Specifies:**

31 **(A) The nature and basis of the claim;**

1 **(B) The amount claimed;**

2 **(C) All property, real and personal, upon which the claim is made,**
3 **in a manner sufficient for identification; and**

4 **(D) That the person filing the notice will claim a lien on the prop-**
5 **erty.**

6 **(3)(a) A notice of lis pendens established under subsection (1) of this**
7 **section expires if the employee or the assignee of the employee does**
8 **not bring an action or proceeding to establish the liability of the em-**
9 **ployer for the wages claimed in a forum of competent jurisdiction**
10 **within 120 days after the notice of lis pendens is filed, or does not**
11 **within that time file notice of the filing of the action or proceeding**
12 **with the county clerk or Secretary of State, as applicable.**

13 **(b) Any interested party may file a certified copy of the final judg-**
14 **ment in an action or proceeding to establish the liability of the em-**
15 **ployer for the wages claimed with the county clerk or Secretary of**
16 **State, as applicable. If the forum has found that no wages are due, the**
17 **notice of lis pendens is void as of the filing of the final judgment.**

18 **(4) The employer against whose property a notice of lis pendens is**
19 **filed under subsection (1) of this section may:**

20 **(a) Accede to a lien for the unpaid wages pursuant to subsection**
21 **(7)(a)(B) or (7)(c)(B) of this section;**

22 **(b) Pay the unpaid wages as claimed in the notice, in which case,**
23 **the employee or assignee shall promptly file a notice of withdrawal of**
24 **the lis pendens notice with the county clerk or Secretary of State, as**
25 **applicable;**

26 **(c) Request an ex parte review by the Commissioner of the Bureau**
27 **of Labor and Industries of the representations made in the notice of**
28 **lis pendens to determine whether the representations establish a prima**
29 **facie case that the wages claimed are owed by the employer to the**
30 **person claiming them. The commissioner may review the notice and**
31 **accompanying declaration on an expedited basis, without hearing, and**

1 without the filing of any action or proceeding, and may void the notice
2 of lis pendens for failure to establish a prima facie case. Either party
3 may seek review of the determination of the commissioner by filing
4 an action for declaratory relief naming as parties the employer and
5 employee and not naming the commissioner;

6 (d) File with the recording officer of the county in which the lis
7 pendens notice on real property is filed, or of the county in which the
8 services for unpaid wages that are claimed were performed, a bond
9 executed by a corporation authorized to issue surety bonds in this
10 state, to the effect that the principal or principals on the bond shall
11 pay the amount of the claim and all costs and attorney fees awarded
12 against the property on account of the unpaid wages. The bond must
13 be in an amount that is not less than \$1,000 or 150 percent of the
14 amount claimed under the notice, whichever is greater;

15 (e) Deposit with the treasurer of the county in which the notice of
16 lis pendens is filed, or of the county in which the services for unpaid
17 wages that are claimed were performed, an amount equal to \$1,000 or
18 150 percent of the amount claimed under the notice, whichever is
19 greater;

20 (f) File an action to vacate the notice; or

21 (g) Take no action, and wait for the notice to expire or become void
22 pursuant to subsection (3) of this section.

23 (5) Upon the filing of a bond or the making of a deposit under
24 subsection (4)(d) or (e) of this section:

25 (a) The notice of lis pendens becomes void.

26 (b) The treasurer of the county in which the bond was filed or de-
27 posit was made shall:

28 (A) Release the bond or return the deposit to the person who filed
29 the bond or made the deposit if no action or proceeding to establish
30 the liability of the employer for the wages claimed in a forum of
31 competent jurisdiction within 120 days after the claim is filed; or

1 **(B) Upon entry of the final judgment in an action or proceeding to**
2 **resolve the liability of the employer to the employee, pay any amount**
3 **the court determines to be owed to the employee or, if no amount is**
4 **owed, release the bond or return the deposit to the person who filed**
5 **the bond or made the deposit.**

6 **(c) If an employee or assignee who has filed a notice of lis pendens**
7 **establishes in an action or proceeding to resolve the liability of the**
8 **employer to the employee that the employee is owed wages by the**
9 **employer, the employee or assignee is entitled to judgment against the**
10 **sureties upon the bond or against the moneys deposited.**

11 **(6) An employee who is owed wages by an employer in this state**
12 **has a lien upon all property of the employer, real and personal, located**
13 **in this state for the amount of the unpaid wages to which the em-**
14 **ployee is entitled.**

15 **(7)(a) A lien under subsection (6) of this section upon real property**
16 **is perfected if the employee or the assignee of the employee:**

17 **(A) Files a notice of claim of lien with the county clerk of the**
18 **county in which the real property is located;**

19 **(B) Files proof of the amount of wages owed in the form of a court**
20 **judgment, wage order determined by the commissioner or acknowl-**
21 **edgement of wage debt made by the employer with the county clerk**
22 **of the county in which the real property is located;**

23 **(C) Pays any required filing fees; and**

24 **(D) Serves a copy of the notice filed under this subsection on the**
25 **employer by certified mail.**

26 **(b) The county clerk shall enter notice of a perfected lien estab-**
27 **lished under this subsection in the County Clerk Lien Record.**

28 **(c) A lien under subsection (6) of this section upon personal prop-**
29 **erty is perfected if the employee or the assignee of the employee:**

30 **(A) Files a notice of claim of lien with the Secretary of State;**

31 **(B) Files proof of the amount of wages owed in the form of a court**

1 judgment, wage order determined by the commissioner or acknowl-
2 edgement of wage debt made by the employer with the Secretary of
3 State;

4 (C) Pays any required filing fees; and

5 (D) Serves a copy of the notice filed under this subsection on the
6 employer by certified mail.

7 (d) The Secretary of State shall include notice of a perfected lien
8 established under this subsection in the index maintained by the sec-
9 retary for filing financing statements pursuant to ORS chapter 79.

10 (e) A lien established under subsection (6) of this section and per-
11 fected as specified in paragraph (a) or (c) of this subsection shall be
12 effective as of the date that a notice of lis pendens concerning the
13 same debt that has not expired or been voided was filed with the
14 county clerk or Secretary of State.

15 (8) A lien established under subsection (6) of this section has pri-
16 ority over the rights of any purchaser of property of the employer,
17 including any bona fide purchaser under 11 U.S.C. 545(2), and over all
18 other debts, judgments, decrees, liens or mortgages against the em-
19 ployer, except a lien established by a commercial lending institution
20 as provided in subsection (9) of this section or a lien held by a public
21 body for unpaid taxes, regardless of whether those debts, judgments,
22 decrees, liens or mortgages originated before or after the lien estab-
23 lished under subsection (6) of this section takes effect.

24 (9)(a) A lien established under subsection (6) of this section does
25 not take priority over a lien of a commercial lending institution
26 against the employer that was originated before the lien established
27 under subsection (6) of this section takes effect.

28 (b) Notwithstanding paragraph (a) of this subsection, a lien estab-
29 lished under subsection (6) of this section has priority for the first
30 \$3,000 of the lien amount over a lien of a commercial lending institu-
31 tion that was originated before the lien established under subsection

1 **(6) of this section takes effect.**

2 **(10) A lien claimant who fails to establish that the employer is in-**
3 **debted to the lien claimant and is found by the court to have filed a**
4 **frivolous claim or a claim without a reasonable basis is liable to the**
5 **employer for the greater of \$500 or the actual costs the employer in-**
6 **curring in complying with the requirements of this section.**

7 **(11) An attorney who assists a lien claimant in filing a lien claim**
8 **under this section that the court finds to be frivolous or without a**
9 **reasonable basis is liable for the actual costs the employer incurred in**
10 **complying with the requirements of this section and for attorney fees**
11 **as provided under ORS 20.075.**

12 **SECTION 9. (1) There is hereby created a private cause of action**
13 **for violation of ORS 652.610 (1) or (2), ORS 652.750 and section 10 of this**
14 **2015 Act.**

15 **(2) Upon finding a violation of ORS 652.610 (1) or (2), ORS 652.750**
16 **or section 10 of this 2015 Act, the court shall award to the aggrieved**
17 **person:**

18 **(a) Actual damages, including, but not limited to, lost wages and**
19 **benefits plus interest;**

20 **(b) Statutory damages of \$50 per day for each working day that the**
21 **violation occurred or continues to occur or \$500, whichever is greater**
22 **less;**

23 **(c) Reasonable attorney fees and costs; and**

24 **(d) Other appropriate relief, including injunctive and declaratory**
25 **relief, that the court deems necessary or appropriate.**

26 **(3)(a) In addition to any other penalty provided by law, the Com-**
27 **missioner of the Bureau of Labor and Industries may assess a civil**
28 **penalty not to exceed \$1,000 against any person who violates ORS**
29 **652.610 (1) or (2), ORS 652.750 or section 10 of this 2015 Act or any rule**
30 **adopted under this 2015 Act.**

31 **(b) Civil penalties under this subsection shall be imposed as pro-**

1 vided in ORS 183.745.

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

9 **SECTION 10.** An employer may not discharge, retaliate against or
10 in any other manner discriminate against an employee or applicant for
11 employment because the employee or applicant:

12 (1) Has complained that employer has violated any provision of this
13 2015 Act.

14 (2) Has discussed, inquired or consulted with an attorney, a state
15 or federal agency, a collective bargaining representative, a worker
16 advocacy organization or a coworker concerning rights granted under
17 this 2015 Act.

18 (3) Has made a statement at or in contemplation of a hearing,
19 grievance or arbitration or to the press in support of a claim or that
20 the provisions of this 2015 Act or any rule related to this Act has been
21 violated.

22 (4) Has caused to be instituted any proceeding under or related to
23 this 2015 Act or to the collection of wages.

24 (5) Has testified, is about to testify or has prepared to testify in any
25 proceeding or has participated in an investigation of a claim under or
26 related to this 2015 Act or to the collection of wages.

27 (6) Has assisted another employee to make a claim or has opposed
28 any action that is reasonably believed to be a violation of this 2015 Act.

29 (7) Is believed by the employer to have engaged in any of the
30 actions described in this section.

31 **SECTION 11.** For purposes of ORS chapters 652, 653 and 658, an in-

1 **dividual performing services that are an integral part of the business**
2 **of an employer is presumed to be an employee of the employer. This**
3 **presumption may be rebutted by evidence demonstrating that the in-**
4 **dividual was not authorized or permitted to perform services for the**
5 **employer.**

6 **SECTION 12. (1) The rights and remedies established in this 2015**
7 **Act are cumulative, and nothing in this 2015 Act may be construed to**
8 **abrogate any existing employee right, action or remedy.**

9 **(2) The rights and obligations established under this 2015 Act may**
10 **not be waived by an employee or an employer.**

11
