

D R A F T

SUMMARY

Declares importance of enhancing trade opportunities vital to economic interest of Oregon through labor peace at Port of Portland. Encourages port to develop language that provides for labor peace for inclusion in contracts executed by port. Requires certain reports about labor peace at port to be submitted to Governor and Legislative Assembly if certain requirements are not met by January 1, 2016.

Specifies terms and conditions of employment required of employers that enter into contracts with port. Requires employer to provide employees with written notice of rights granted under Act and to maintain certain employment records. Authorizes imposition of penalty for failure to comply.

Prohibits discipline or discharge of employee for filing complaint under Act and makes retaliation against employee unlawful employment practice. Authorizes civil action for violation of Act. Prohibits waiver of provisions of Act except as provided in collective bargaining agreement.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to conditions of employment at the Port of Portland; and declaring
3 an emergency.

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

5 **SECTION 1. As used in sections 1 to 8 of this 2015 Act:**

6 **(1) “Employee” means any worker engaged to work for an employer**
7 **at a property owned or controlled by the Port of Portland.**

8 **(2)(a) “Employer” means any business operating under a contract**
9 **with the Port of Portland.**

10 **(b) “Employer” also includes, but is not limited to, a business that**
11 **has a contract with the Port of Portland and that:**

12 **(A) Functions as a common-law employer;**

1 (B) Engages independent contractors to work regularly on or out
2 of the premises controlled by the business and whose work is part of
3 the business' regular economic activity; or

4 (C) Engages a temporary agency or labor contractor to provide la-
5 bor to work regularly on its premises at a property owned or con-
6 trolled by the Port of Portland.

7 (c) "Employer" does not include:

8 (A) An airline;

9 (B) An agency of the federal government; or

10 (C) An organization exempt from federal income taxation as a not-
11 for-profit enterprise engaged solely in training underprivileged indi-
12 viduals under 25 years of age.

13 SECTION 2. (1) The vital nature of the economic interests of the
14 state in the enhanced trade opportunities presented through the effi-
15 cient operation of the Port of Portland has great potential for diver-
16 sifying and improving the economic base of the state and requires
17 labor peace to maximize the contribution of the Port of Portland to
18 those efforts.

19 (2)(a) In order to effectuate the policy expressed in ORS 777.065 and
20 to protect the interests of the state from the economic disruptions
21 that result from labor strife, the Port of Portland is encouraged to
22 develop language that provides for the maintenance of labor peace
23 within the port and to require that all contracts executed between the
24 port and all contractors, tenants, subcontractors or subtenants con-
25 tain this labor peace language.

26 (b) Notwithstanding paragraph (a) of this subsection, the Port of
27 Portland may negotiate alternative labor peace language for inclusion
28 in a contract if a union expresses a desire to establish labor peace
29 language specific to a distinct group of employees.

30 SECTION 3. (1) If the Port of Portland fails to adopt a labor peace
31 agreement for any of the operations of the port by January 1, 2016, the

1 port shall post a draft report on the port's website that includes an
2 explanation for the failure to do so. The public shall have 30 days to
3 submit comments about the draft report to the Port of Portland.
4 Within 30 days of the closing date for public comments, the Port of
5 Portland shall consider the public comments submitted and the testi-
6 mony at any public hearings held by the port under this subsection
7 and submit a final report to the Commissioner of the Bureau of Labor
8 and Industries. After considering the report and any public testimony
9 provided at any hearings held in accordance with this section, the
10 commissioner shall prepare a report on the status of the implementa-
11 tion of labor peace agreements by the Port of Portland and submit the
12 report to the Governor and to the Legislative Assembly as provided in
13 ORS 192.245.

14 (2)(a) The Port of Portland and the Commissioner of the Bureau of
15 Labor and Industries may hold public hearings concerning the imple-
16 mentation of labor peace agreements by the port.

17 (b) If the port or the commissioner hold public hearings authorized
18 under this subsection, the port and the commissioner may examine,
19 or cause to be examined, documents of the port and the contractors,
20 tenants, subcontractors and subtenants of the port and subpoena and
21 examine under oath any person, including the staff and Board of
22 Commissioners of the Port of Portland.

23 (3) This section is repealed on January 2, 2017.

24 **SECTION 4.** Employers shall implement and observe the following
25 conditions of employment:

26 (1)(a) The minimum hourly wage rate for every employee shall be
27 \$15 per hour. For the purposes of this subsection, "wage" does not in-
28 clude bonuses, gratuities or service charge distributions.

29 (b) On March 1, 2017, and each March 1 thereafter, the minimum
30 hourly wage rate shall be increased by the amount of the increase in
31 the prior calendar year in the cost of living index for urban consumers

1 in the Portland area published by the Bureau of Labor Statistics of the
2 United States Department of Labor, or any successor index.

3 (c) A nonexempt employee shall be paid one and one-half the
4 employee's regular hourly wage rate for each hour the employee works
5 over eight hours in a 24-hour period.

6 (2)(a) A nonprobationary employee may not be terminated, sus-
7 pended or demoted without just cause. For purposes of this subsection,
8 just cause for discipline does not include an employee having reported
9 to another employee, a manager, any member of the press or a gov-
10 ernment official the employee's concerns about sanitation or
11 harassment due to membership in any protected class.

12 (b) An employee may not be required to serve a probationary period
13 of more than 30 calendar days after hire.

14 (c) Nothing in this subsection precludes an employer from exercis-
15 ing the employer's discretion to relieve an employee of supervisory or
16 management duties.

17 (3)(a) When an employer is filling positions at the Port of Portland
18 after employees are being displaced, or have been displaced in the last
19 two years, by the closing of any outlet performing similar work, the
20 employer shall offer the positions to those displaced employees unless
21 the employer can establish that none of the displaced employees are
22 capable of performing the work even if the displaced employees re-
23 ceived the same training as the employer has given any other new
24 hires.

25 (b) The employer shall retain those displaced employees accepting
26 positions for at least 90 workdays unless the employer can prove by
27 clear and convincing evidence that their job performance or conduct
28 provided just cause for their discharge.

29 (c) Nothing in this subsection may be construed to interfere with
30 the discretion of the employer to select which employees to assign
31 supervisory or management duties or to mandate that a new employer

1 replacing another employer continue to operate at the same staffing
2 level.

3 (4)(a) An employer shall give controlling weight to seniority in
4 making decisions between nonsupervisory employees as to layoff, pro-
5 motion to nonsupervisory positions, and assignment of shifts or
6 stations where applicable, if those decisions impact the employees'
7 income, health or family responsibilities.

8 (b) Notwithstanding paragraph (a) of this subsection, an employer
9 may make decisions regarding the matters described in paragraph (a)
10 of this subsection on a basis other than seniority if there is clear and
11 convincing evidence of the business necessity to do so.

12 (5)(a) The employer shall provide regular full-time employment of
13 at least 30 hours per week to all employees unless the employer shows
14 by clear and convincing evidence that use of part-time or temporary
15 employees is required by business necessity.

16 (b) Nothing in this subsection may be construed to encourage or to
17 permit the discharge or reduction in hours of any part-time employee
18 hired before the effective date of this 2015 Act.

19 (c) An employer using part-time employees shall offer those em-
20 ployees any additional hours of work that become available due to
21 employee turnover, increased business or other reasons, rather than
22 engaging a new part-time employee to work those hours. Nothing in
23 this subsection may be construed to require the employer to offer
24 more than 40 hours of work per week to any employee.

25 (d) The employer shall keep the hours of work for each employee
26 at more than the level required to maintain eligibility for benefits
27 provided by the employer or required by law unless the employer
28 shows by clear and convincing evidence that the reduction in hours
29 below that level is a business necessity or has been requested by the
30 employee.

31 (6)(a) On or before a new employee's first day of work, the employer

1 shall inform the employee in writing of the employee's work schedule
2 and the minimum number of expected work hours the employee will
3 be assigned to work per month.

4 (b) Except as provided in paragraph (c) of this subsection, if the
5 employer changes the work schedule of an employee that was provided
6 to the employee pursuant to paragraph (a) of this subsection, the em-
7 ployer shall provide to the employee the new work schedule in writing
8 not less than 14 days before the first day of the new work schedule.
9 If the expected minimum number of work hours an employee will be
10 assigned changes as a result of the new work schedule, the employer
11 shall also provide notification of the change of the minimum number
12 of hours assigned to the employee not less than 14 days in advance of
13 the first day the change will take effect.

14 (c) The employer may make work schedule changes as needed, in-
15 cluding offering additional hours of work to employees beyond those
16 previously scheduled. An employer that changes the work schedule of
17 an employee with less than 24 hours' notice prior to the start of the
18 changed shift shall provide one extra hour of pay at the employee's
19 regular hourly wage rate for each shift that is changed with less than
20 24 hours' notice, except in the case of the need to schedule the em-
21 ployee due to the unforeseen unavailability of another employee pre-
22 viously scheduled to work that shift.

23 (d) The notifications required under this subsection must be made
24 to the employee in writing. The notifications may be provided through
25 electronic mail or electronic texting. Nothing in this subsection shall
26 be construed as prohibiting an employer from using any additional
27 means of notifying an employee of the work schedule.

28 (e) If work schedules are not consistent, the employer shall post the
29 work schedule for all employees in a conspicuous place so as to permit
30 all employees to read the work schedule. Availability of the work
31 schedule by electronic means accessible by all employees of the em-

1 **ployer constitutes compliance with this paragraph.**

2 **(f) Nothing in this subsection may be construed to prevent the**
3 **employer from allowing an employee to work in place of another em-**
4 **ployee who has been scheduled to work a particular shift as long as**
5 **the change in schedule is mutually agreed upon by the employees. The**
6 **employer is not subject to the requirements of paragraphs (b) to (d)**
7 **of this subsection for voluntary shift trades.**

8 **(g) The requirements established in this subsection do not apply**
9 **during periods when regular operations of the employer are suspended**
10 **due to events beyond the control of the employer.**

11 **(7) Except as provided in this subsection, an employee may not be**
12 **scheduled to work a split shift. All work scheduled for an employee in**
13 **a workday shall be continuous except for rest and meal periods, none**
14 **of which may exceed one hour in duration. Split shifts shall be allowed**
15 **when requested by a employee and mutually agreed upon by the em-**
16 **ployee and the employer. If an employee who has voluntarily agreed**
17 **with the employer to work a split shift vacates the position, the posi-**
18 **tion shall be restored to a shift of consecutive hours.**

19 **(8) An employee's days off must be scheduled consecutively except**
20 **as required by business necessity, or if otherwise requested in writing**
21 **by the employee upon the employee's sole initiative. If an employee is**
22 **required to work without consecutive days off, the employee shall be**
23 **paid additional day's wages at the employee's regular hourly wage rate**
24 **for any workweek in which the employee is not provided two consec-**
25 **utive days off. This subsection does not apply to salaried exempt em-**
26 **ployees.**

27 **(9) The employer shall pay an employee:**

28 **(a) For at least four hours at the employee's regular hourly wage**
29 **rate for each day the employee reports for work under specific in-**
30 **structions from the employer but is provided with less than four hours**
31 **of work. If the employee's scheduled hours are less than four hours,**

1 the employee shall be paid for the employee's scheduled hours for that
2 day even if the employee is provided with less than the scheduled
3 hours of work.

4 (b) For at least one hour at the employee's regular hourly wage rate
5 for each day the employee is given specific instructions to contact the
6 employer, or to wait to be contacted by the employer, less than 24
7 hours in advance of the start of a potential work shift to determine
8 whether the employee must report to work for that shift.

9 (10) An employee shall accrue sick leave that provides for the em-
10 ployee being credited with the number of hours of leave required to
11 provide the employee with at least one-half day's earnings per month
12 worked. Leave accrued as required under this subsection shall be paid
13 out of the employer's general assets. Accrued sick leave may be used
14 if the employee loses work due to personal illness or injury or due to
15 domestic or sexual violence. An employee is not required to incur
16 expenses in order to establish the employee's eligibility to use paid sick
17 leave.

18 (11) An employer shall pay, out of the employer's general assets, the
19 amount of earnings missed by an employee due to time spent by the
20 employee in responding to a summons for jury duty. Any juror fees
21 paid to the employee by the court for time spent by the employee in
22 responding to a summons for jury duty shall be turned over to the
23 employer by the employee.

24 (12) An employer and a business operating under a contract with
25 the Port of Portland and a business functioning as common-law em-
26 ployer, or a business that engages independent contractors to work
27 regularly on or out of the premises controlled by a business operating
28 under a contract with the Port of Portland, whose work is part of the
29 regular economic activity of the contracting business, or a business
30 that engages a temporary agency or labor contractor to provide labor
31 to work regularly on its premises at a property owned or controlled

1 by the Port of Portland, are jointly and severally liable for violation
2 of sections 1 to 8 this 2015 Act.

3 **SECTION 5. (1)(a) An employer shall:**

4 (A) Maintain and preserve for at least three years a record of each
5 employee's name, address, job classifications, regular hourly wage
6 rates, hours worked, leave and benefits accrued and used, and reasons
7 for termination, if any.

8 (B) Submit a copy of the records required to be maintained under
9 this paragraph to the Port of Portland by March 31, June 30, Septem-
10 ber 30 and December 31 of each year.

11 (b) If an employer fails to provide a copy of the required records
12 within five days of a due date described in paragraph (a) of this sub-
13 section, the port shall assess the employer a penalty of \$500 per day.

14 (2) An employer shall give written notification to each current em-
15 ployee, and to each new employee at time of hire, of the rights of the
16 employee under sections 1 to 8 of this 2015 Act. The notification shall
17 be in the form provided by the Port of Portland, in English, Spanish
18 and any other languages spoken by a significant number of the em-
19 ployees, and shall be posted prominently in areas at the work site
20 where all employees will see the notice.

21 (3) An employer shall permit access to work sites and relevant
22 payroll records for authorized representatives of the Port of Portland
23 and the State of Oregon for the purposes of:

24 (a) Monitoring compliance with sections 1 to 8 of 2015 Act;

25 (b) Investigating employee complaints of noncompliance with
26 sections 1 to 8 of this 2015 Act;

27 (c) Evaluating the operation and effects of sections 1 to 8 of this
28 2015 Act;

29 (d) Producing for inspection and copying any payroll records for any
30 or all persons employed by the employer; and

31 (e) Providing opportunities for representatives of any nonprofit or-

1 **ganization in the industry of the employer involved with the enforce-**
2 **ment of labor standards to have access to the workforce of the**
3 **employer during nonworking hours and in nonwork areas for the**
4 **purpose of ensuring compliance with sections 1 to 8 of this 2015 Act.**

5 **SECTION 6. (1) An employer may not discharge, discipline, reduce**
6 **any part of the compensation of, or otherwise or in any other manner**
7 **discriminate against an employee because:**

8 **(a) Of the enactment of sections 1 to 8 of this 2015 Act;**

9 **(b) The employee has caused to be instituted, or is about to cause**
10 **to be instituted, any proceedings under or related to sections 1 to 8**
11 **of this 2015 Act; or**

12 **(c) The employee has testified, or is about to testify, in any such**
13 **proceedings.**

14 **(2) A violation of this section is an unlawful employment practice**
15 **under ORS chapter 659A. A person unlawfully discriminated against**
16 **under this section may file a complaint under ORS 659A.820 with the**
17 **Commissioner of the Bureau of Labor and Industries.**

18 **SECTION 7. A waiver of any of the provisions of sections 1 to 8 of**
19 **this 2015 Act is deemed contrary to public policy and is void and**
20 **unenforceable. However, employees are not barred from entering into**
21 **a written valid collective bargaining agreement waiving a provision**
22 **of sections 1 to 8 of this 2015 Act if the waiver is set forth in clear and**
23 **unambiguous terms in the collective bargaining agreement.**

24 **SECTION 8. (1) A person claiming injury from a violation of**
25 **sections 1 to 8 of this 2015 Act may bring an action against the em-**
26 **ployer in a court of competent jurisdiction to enforce the provisions**
27 **of sections 1 to 8 of this 2015 Act.**

28 **(b) If a violation is proven, the complainant shall be entitled to all**
29 **appropriate remedies, including but not limited to back pay, rein-**
30 **statement, injunctive relief and reasonable attorney fees and costs and**
31 **disbursements.**

1 **(2) In addition to any relief awarded under this section, an employee**
2 **who proves a violation of sections 1 to 8 of this 2015 Act may recover**
3 **treble the amount of the value of the lost regular wages and benefits,**
4 **together with statutory interest thereon, and any consequential dam-**
5 **ages suffered by the employee.**

6 **SECTION 9.** **This 2015 Act being necessary for the immediate pres-**
7 **ervation of the public peace, health and safety, an emergency is de-**
8 **clared to exist, and this 2015 Act takes effect on its passage.**

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