

B-Engrossed
House Bill 2386

Ordered by the House April 28
Including House Amendments dated March 24 and April 28

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Commissioner of the Bureau of Labor and Industries Brad Avakian)

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.

Authorizes Commissioner of Bureau of Labor and Industries to issue temporary cease and desist order under certain circumstances. **Provides procedure for employer to appeal temporary cease and desist order.** Authorizes commissioner to require employer that has not established regular payday to provide bond or cease conducting business until employer has provided bond.

A BILL FOR AN ACT

1
2 Relating to enforcement authority of the Commissioner of the Bureau of Labor and Industries; cre-
3 ating new provisions; and amending ORS 651.060, 652.120, 652.125, 652.332, 652.340 and 652.900.

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

5 **SECTION 1.** ORS 651.060 is amended to read:

6 651.060. (1) The Commissioner of the Bureau of Labor and Industries may conduct investigations,
7 issue subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and take testimony
8 in all matters relating to the duties required under ORS 279C.800 to 279C.870, 651.030, 651.050,
9 651.120 and 651.170 and ORS chapters 652, 653, 658 and 659A and in all contested cases scheduled
10 for hearing by the Bureau of Labor and Industries pursuant to ORS chapter 183 when the informa-
11 tion sought is relevant to a lawful investigative purpose and is reasonable in scope. The testimony
12 shall be taken in some suitable place in the vicinity to which testimony is applicable. The commis-
13 sioner shall adopt rules for gathering information through subpoenas or testimony. The rules must
14 include procedures through which a party may object to providing information. After being served
15 with a subpoena, if a person refuses, without reasonable cause, to be examined, to answer any
16 question or to produce any document or other thing as required by the subpoena, the commissioner
17 may petition the circuit court in the county in which the investigation is pending for an order di-
18 recting the person to show cause why the person has not complied with the subpoena and should
19 not be held in contempt. The commissioner shall serve the court's order upon the person in the
20 manner provided by ORCP 55 D. If the person fails to show cause for the noncompliance, the court
21 shall order the person to comply with the subpoena within such time as the court shall direct and
22 may hold the person in contempt.

23 (2) Witnesses subpoenaed and testifying before any officer of the bureau shall be paid the fees
24 and mileage provided for witnesses in ORS 44.415 (2). The payment shall be made from the fund
25 appropriated for the use of the bureau and in the manner provided in ORS 651.170 for the payment
26 of other expenses of the bureau.

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 (3) The commissioner shall employ a deputy commissioner and [such] other assistants or per-
2 sonnel as may be necessary to carry into effect the powers and duties of the commissioner or of the
3 bureau and may prescribe the duties and responsibilities of the employees. The commissioner may
4 delegate any of the powers of the commissioner or of the bureau to the deputy commissioner and
5 to the other assistants employed under this subsection for the purpose of transacting the business
6 of the commissioner's office or of the bureau. In the absence of the commissioner, the deputy com-
7 missioner and the other assistants whom the commissioner employs have full authority, under the
8 commissioner's direction, to do and perform any duty that the law requires the commissioner to
9 perform. However, the commissioner is responsible for all acts of the deputy commissioner and of
10 the assistants employed under this subsection.

11 (4) The commissioner may adopt [such] reasonable rules [as] **that** may be necessary to adminis-
12 ter and enforce [any] **the** statutes over which the commissioner or the bureau has jurisdiction.

13 (5) The commissioner may conduct, and **may** charge and collect fees for, public information
14 programs pertaining to [any of] the statutes over which the commissioner or the bureau has juris-
15 diction.

16 (6) **If the commissioner has reason to believe that an employer has violated the pro-
17 visions of ORS 279C.800 to 279C.870 or 658.405 to 658.503 or of ORS chapter 652 or 653, the
18 commissioner may issue a temporary cease and desist order requiring an employer to refrain
19 from the unlawful practice alleged. For the purpose of this subsection, the commissioner's
20 "reason to believe" may be based on factors that include but are not limited to:**

21 (a) **A previous pattern of violations by the employer;**

22 (b) **More than one complaint filed against the employer;**

23 (c) **A complaint filed with another agency related to issues that are relevant to the cur-
24 rent case;**

25 (d) **Information from the Interagency Compliance Network, established under ORS
26 670.700, related to issues that are relevant to the current case; or**

27 (e) **Other credible information.**

28 (7) **The commissioner may not enforce a temporary cease and desist order issued under
29 subsection (6) of this section that would preclude the ongoing harvest or distribution of
30 perishable agricultural products. However, a temporary cease and desist order described in
31 this subsection becomes enforceable after completion of the harvest or distribution that is
32 in progress at the time the commissioner issues the order.**

33 (8) **If a temporary cease and desist order issued under subsection (6) of this section
34 mandates compensation to an employee in an amount that is disputed by an employer, the
35 employer may provide a bond in lieu of payment to ensure timely payment of compensation
36 for a future period in an amount the commissioner determines necessary. Any amount re-
37 quired for payment to the employee or bond shall be stated in the temporary cease and desist
38 order.**

39 (9) **An employer may request a hearing under ORS 183.413 to 183.470 to contest all or part
40 of a temporary cease and desist order. To request a hearing, the employer shall:**

41 (a) **Request in writing to the commissioner a hearing to contest the temporary cease and
42 desist order;**

43 (b) **Specify the grounds on which the employer contests the temporary cease and desist
44 order; and**

45 (c) **Include with the request information necessary to support the grounds on which the**

1 **employer contests the temporary cease and desist order.**

2 (10) **If an employer requests a hearing to contest a temporary cease and desist order that**
3 **was issued under subsection (6) of this section, an administrative law judge of the Bureau**
4 **of Labor and Industries shall schedule the hearing to take place within 30 days of receipt of**
5 **the request by the commissioner.**

6 (11) **Upon close of a hearing held under subsection (10) of this section, the administrative**
7 **law judge shall prepare and issue findings, exceptions and an order within 30 days. The order**
8 **issued by the administrative law judge under this subsection shall be a final order subject**
9 **to appeal under ORS 183.480 to 183.497.**

10 (12) **For any proceeding conducted under subsection (10) of this section, a court may**
11 **award attorney fees to the employer under ORS 20.105, 182.090 or 183.497.**

12 **SECTION 2.** ORS 652.332 is amended to read:

13 652.332. (1) In any case when the Commissioner of the Bureau of Labor and Industries has re-
14 ceived a wage claim complaint [*which*] **that** the commissioner could seek to collect through court
15 action, the commissioner may instead elect to seek collection of [*such*] **the** claim through adminis-
16 trative proceedings in the manner provided in this section, subject to the employer's right to request
17 a trial in a court of law. The commissioner may join in a single administrative proceeding any
18 number of wage claims against the same employer. Upon making such election, the commissioner
19 shall serve upon the employer and the wage claimant an order of determination directing the em-
20 ployer to pay to the commissioner the amount of the wage claim and any penalty amounts under
21 ORS 279C.855 (1), 652.150 and 653.055 (1) determined to be owed the wage claimant. Service shall
22 be made in the same manner as service of summons or by certified mail, return receipt requested.
23 The order of determination shall include:

24 (a) A reference to the particular sections of the statutes or rules involved;

25 (b) A short and concise statement of the basis for the amounts determined to be owed to each
26 wage claimant;

27 (c) A statement of the party's right to request a contested case hearing and to be represented
28 by counsel at [*such a*] **the** hearing, and of the employer's right to a trial in a court of law, provided
29 that any request for a contested case hearing or trial in a court of law must be received by the
30 commissioner in writing within 20 days after receipt by the party of the order of determination;

31 (d) A statement that the employer must, within 20 days after receipt of the order of determi-
32 nation, either pay in full the wage claim and any penalties assessed, or present to the commissioner
33 a written request for a contested case hearing or a trial in a court of law as provided in this section;

34 (e) A statement that failure to make a written request to the commissioner for a contested case
35 hearing or a trial of the claim in a court of law within the time specified shall constitute a waiver
36 of the right [*thereto*] **to a contested case hearing** and a waiver of the right to a trial by jury; and

37 (f) A statement that unless the written requests provided for in paragraph (c) of this subsection
38 are received by the commissioner within the time specified for making [*such*] **the** requests, the order
39 of determination shall become final.

40 (2) Upon failure of the employer to pay the amount specified in the order of determination or
41 to request a trial in a court of law within the time specified, and upon failure of any party to request
42 a contested case hearing within the time specified, the order of determination shall become final.

43 (3) If a party makes a timely request for a contested case hearing, a hearing shall be held in
44 accordance with the applicable provisions of ORS 183.415 to 183.500 by the commissioner or the
45 commissioner's designee. The commissioner shall adopt rules for [*such*] **the** hearing. In any hearing

1 before the commissioner's designee, the designee is authorized to issue the final order in the case.
2 If the employer makes a timely request for a trial in a court of law, the commissioner may proceed
3 against the employer as provided in ORS 652.330 (1)(b).

4 **(4) The commissioner or the commissioner's designee may include in a final order issued**
5 **under this section a cease and desist order against an employer found to have engaged in**
6 **an unlawful practice alleged in the order of determination. The final order must take into**
7 **account the need to supervise compliance with the terms of the final order. The final order**
8 **may require the employer to:**

9 **(a) Perform an act or a series of acts designated in the final order that are reasonably**
10 **calculated to:**

11 **(A) Carry out the purposes of ORS 279C.800 to 279C.870, 658.405 to 658.503 or ORS chap-**
12 **ters 652 or 653;**

13 **(B) Eliminate the effects of the unlawful practice that the employer has been found to**
14 **have engaged in, including but not limited to paying all wages and penalties due and owing**
15 **to the wage claimant and complying with injunctive or other equitable relief; and**

16 **(C) Protect the rights of the wage claimant and other persons similarly situated;**

17 **(b) Submit reports to the commissioner on the manner of compliance with other terms**
18 **and conditions specified in the final order, and take other action as may be required to en-**
19 **sure compliance with the final order; and**

20 **(c) Refrain from an action specified in the final order that would jeopardize the rights**
21 **of the wage claimant or other persons similarly situated, or that would otherwise frustrate**
22 **the purposes of ORS 279C.800 to 279C.870, 658.405 to 658.503 or ORS chapters 652 or 653.**

23 [(4)] **(5) Final administrative orders issued in a wage claim proceeding are subject to review by**
24 **the Court of Appeals as provided in ORS 183.480 and 183.482.**

25 [(5)] **(6) When an order issued under this section becomes final, it may be recorded in the County**
26 **Clerk Lien Record in any county of this state. In addition to any other remedy provided by law,**
27 **recording [an] a final order in the County Clerk Lien Record pursuant to the provisions of this**
28 **section has the effect provided for in ORS 205.125 and 205.126, and the final order may be enforced**
29 **as provided in ORS 205.125 and 205.126. The final order may also be enforced by writ of**
30 **mandamus or civil action to compel performance of the final order.**

31 [(6)] **(7) [Where] If the wage claim arose out of work performed by the claimant for the employer**
32 **on any public works project to which ORS 279C.830 or 279C.840 applies, and a state agency holds**
33 **sufficient funds as retainage on [such] the project to pay [such] the claim or [any portion thereof]**
34 **a portion of the claim, the state agency may, at the request of the commissioner, pay to the com-**
35 **missioner from the retainage all or part of the amount due on the claim under the final order.**

36 **SECTION 3. The amendments to ORS 652.332 by section 2 of this 2015 Act apply to orders**
37 **that become final on or after the effective date of this 2015 Act.**

38 **SECTION 4. ORS 652.120 is amended to read:**

39 652.120. (1) Every employer shall establish and maintain a regular payday, at which date the
40 employer shall pay all employees the wages due and owing to them.

41 (2) Payday may not extend beyond a period of 35 days from the time that the employees entered
42 upon their work, or from the date of the last regular payday.

43 (3) This section does not prevent the employer from establishing and maintaining paydays at
44 more frequent intervals.

45 (4) This section does not prevent any employer from entering into a written agreement, prior to

1 the rendering of any services, and mutually satisfactory with the employer's employees, as to the
2 payment of wages at a future date.

3 **(5)(a) Except as provided in subsection (6) of this section, if an employer fails to pay**
4 **wages due and owing to an employee on the regular payday established as required by sub-**
5 **section (1) of this section, and the failure to pay those wages is not the result of circum-**
6 **stances beyond the control of the employer, the employer is subject to a civil penalty as**
7 **provided in ORS 652.900.**

8 **(b) For purposes of determining when an employer has paid wages or compensation under**
9 **this section, payment occurs on the date the employer delivers the payment to the employee**
10 **or sends the payment by first class mail, express mail or courier service.**

11 [(5)] (6) When an employer has notice that an employee has not been paid the full amount the
12 employee is owed on a regular payday and there is no dispute between the employer and the em-
13 ployee regarding the amount of the unpaid wages:

14 (a) If the unpaid amount is less than five percent of the employee's gross wages due on the
15 regular payday, the employer shall pay the employee the unpaid amount no later than the next
16 regular payday; or

17 (b) If the unpaid amount is five percent or more of the employee's gross wages due on the reg-
18 ular payday, the employer shall pay the employee the unpaid amount within three days after the
19 employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays.

20 **SECTION 5.** ORS 652.900 is amended to read:

21 652.900. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
22 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person who vi-
23 olates ORS 652.020, 652.110, **652.120**, 652.140, 652.145, 652.260, 652.610 (4) or 652.750 or any rule
24 adopted under those statutes.

25 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

26 (3) All sums collected as penalties under this section shall be first applied toward reimbursement
27 of costs incurred in determining the violations, conducting hearings under this section and ad-
28 dressing and collecting the penalties. The remainder, if any, of the sums collected as penalties under
29 this section shall be paid into the State Treasury and credited to the General Fund and is available
30 for general governmental expenses.

31 **SECTION 6.** ORS 652.125 is amended to read:

32 652.125. (1) If, upon complaint by an employee, and after investigation, it appears to the Com-
33 missioner of the Bureau of Labor and Industries that an employer [*is failing to pay wages within five*
34 *days of a payday scheduled by the employer,*] **has failed to establish or maintain a regular payday**
35 **as required by ORS 652.120**, the commissioner may require the employer to [*give a bond in such*
36 *amount as*] **provide a bond in an amount that** the commissioner determines necessary, with suffi-
37 cient surety, to [*assure*] **ensure** timely payment of wages due employees for [*such*] **a** future period
38 [*as*] **that** the commissioner considers appropriate. In lieu of a bond, the commissioner may accept
39 a letter of credit from an issuer approved by the commissioner, upon [*such*] terms and conditions
40 and for [*such*] **an** amount [*as*] **that** the commissioner determines necessary to [*assure*] **ensure** timely
41 payment of wages for [*such*] **a** future period [*as*] **that** the commissioner determines appropriate.

42 (2) If[,] **an employer fails to provide the required bond** within 10 days after demand for [*such*
43 *bond, the employer fails to provide the same, the commissioner may commence court action against the*
44 *employer in the circuit court of appropriate jurisdiction*] **the bond, the commissioner may com-**
45 **mence an administrative action** to compel the employer to [*furnish such*] **provide the** bond or

1 cease doing business until the employer has done so. The employer shall have the burden of proving
2 the amount *[thereof]* **of the required bond** to be excessive.

3 (3) If the *[court]* **commissioner** finds that there is just cause for requiring *[such]* **the** bond and
4 that the *[same]* **bond** is reasonably necessary or appropriate to secure the prompt payment of the
5 wages of the employees of *[such]* **the** employer, the *[court]* **commissioner** shall enjoin *[such]* **the**
6 employer from doing business in this state until the requirement is met, or shall make other, and
7 may make further, orders appropriate to compel compliance with the requirement.

8 **(4) If an employer fails to comply with the requirements of this section, the commis-**
9 **sioner may commence an action in the circuit court of appropriate jurisdiction to enforce**
10 **the provisions of subsection (3) of this section.**

11 **SECTION 7.** ORS 652.340 is amended to read:

12 652.340. (1) If upon investigation by the Commissioner of the Bureau of Labor and Industries,
13 after taking assignments of any wage claims under ORS 652.330, it appears to the commissioner that
14 the employer is representing to employees that the employer is able to pay wages for their services
15 and that the employees are not being paid for their services, the commissioner may require the
16 employer to give a bond in *[such sum as]* **an amount that** the commissioner deems reasonable and
17 adequate in the circumstances, with sufficient surety, conditioned that the employer will for a *[def-*
18 *inite future period not exceeding six months]* **future period that the commissioner considers ap-**
19 **propriate** conduct business and pay employees in accordance with the laws of Oregon.

20 (2) **If an employer fails to provide the required bond** within 10 days after demand for *[such*
21 *bond the employer fails to provide the same, the commissioner may commence a suit against the em-*
22 *ployer in the circuit court of appropriate jurisdiction]* **the bond, the commissioner may commence**
23 **an administrative action** to compel the employer to *[furnish such]* **provide the** bond or cease doing
24 business until the employer has done so. The employer shall have the burden of proving the amount
25 *[thereof]* **of the required bond** to be excessive.

26 (3) If the *[court]* **commissioner** finds that there is just cause for requiring *[such]* **the** bond and
27 that the *[same]* **bond** is reasonably necessary or appropriate to secure the prompt payment of the
28 wages of the employees of *[such]* **the** employer and the employer's compliance with ORS 652.310 to
29 652.414, the *[court]* **commissioner** shall enjoin *[such]* **the** employer from doing business in this state
30 until the requirement is met, or shall make other, and may make further, orders appropriate to
31 compel compliance with the requirement.

32 **(4) If an employer fails to comply with the requirements of this section, the commis-**
33 **sioner may commence an action in the circuit court of appropriate jurisdiction to enforce**
34 **the provisions of subsection (3) of this section.**

35