

House Bill 3480

Sponsored by COMMITTEE ON RULES

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**.

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 an emergency.

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

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

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

7 (2)(a) **"Employer" means any business operating under a contract with the Port of**
8 **Portland.**

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

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

12 (B) **Engages independent contractors to work regularly on or out of the premises con-**
13 **trolled by the business and whose work is part of the business' regular economic activity;**
14 **or**

15 (C) **Engages a temporary agency or labor contractor to provide labor to work regularly**
16 **on its premises at a property owned or controlled by the Port of Portland.**

17 (c) **"Employer" does not include:**

18 (A) **An airline;**

19 (B) **An agency of the federal government; or**

20 (C) **An organization exempt from federal income taxation as a not-for-profit enterprise**
21 **engaged solely in training underprivileged individuals under 25 years of age.**

22 **SECTION 2. (1) The vital nature of the economic interests of the state in the enhanced**
23 **trade opportunities presented through the efficient operation of the Port of Portland has**
24 **great potential for diversifying and improving the economic base of the state and requires**
25 **labor peace to maximize the contribution of the Port of Portland to those efforts.**

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 (2)(a) In order to effectuate the policy expressed in ORS 777.065 and to protect the in-
 2 terests of the state from the economic disruptions that result from labor strife, the Port of
 3 Portland is encouraged to develop language that provides for the maintenance of labor peace
 4 within the port and to require that all contracts executed between the port and all contrac-
 5 tors, tenants, subcontractors or subtenants contain this labor peace language.

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

9 **SECTION 3.** (1) If the Port of Portland fails to adopt a labor peace agreement for any of
 10 the operations of the port by January 1, 2016, the port shall post a draft report on the port's
 11 website that includes an explanation for the failure to do so. The public shall have 30 days
 12 to submit comments about the draft report to the Port of Portland. Within 30 days of the
 13 closing date for public comments, the Port of Portland shall consider the public comments
 14 submitted and the testimony at any public hearings held by the port under this subsection
 15 and submit a final report to the Commissioner of the Bureau of Labor and Industries. After
 16 considering the report and any public testimony provided at any hearings held in accordance
 17 with this section, the commissioner shall prepare a report on the status of the implementa-
 18 tion of labor peace agreements by the Port of Portland and submit the report to the Gover-
 19 nor and to the Legislative Assembly as provided in ORS 192.245.

20 (2)(a) The Port of Portland and the Commissioner of the Bureau of Labor and Industries
 21 may hold public hearings concerning the implementation of labor peace agreements by the
 22 port.

23 (b) If the port or the commissioner hold public hearings authorized under this subsection,
 24 the port and the commissioner may examine, or cause to be examined, documents of the port
 25 and the contractors, tenants, subcontractors and subtenants of the port and subpoena and
 26 examine under oath any person, including the staff and Board of Commissioners of the Port
 27 of Portland.

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

29 **SECTION 4.** Employers shall implement and observe the following conditions of employ-
 30 ment:

31 (1)(a) The minimum hourly wage rate for every employee shall be \$15 per hour. For the
 32 purposes of this subsection, "wage" does not include bonuses, gratuities or service charge
 33 distributions.

34 (b) On March 1, 2017, and each March 1 thereafter, the minimum hourly wage rate shall
 35 be increased by the amount of the increase in the prior calendar year in the cost of living
 36 index for urban consumers in the Portland area published by the Bureau of Labor Statistics
 37 of the United States Department of Labor, or any successor index.

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

40 (2)(a) A nonprobationary employee may not be terminated, suspended or demoted without
 41 just cause. For purposes of this subsection, just cause for discipline does not include an
 42 employee having reported to another employee, a manager, any member of the press or a
 43 government official the employee's concerns about sanitation or harassment due to mem-
 44 bership in any protected class.

45 (b) An employee may not be required to serve a probationary period of more than 30

1 calendar days after hire.

2 (c) Nothing in this subsection precludes an employer from exercising the employer's
3 discretion to relieve an employee of supervisory or management duties.

4 (3)(a) When an employer is filling positions at the Port of Portland after employees are
5 being displaced, or have been displaced in the last two years, by the closing of any outlet
6 performing similar work, the employer shall offer the positions to those displaced employees
7 unless the employer can establish that none of the displaced employees are capable of per-
8 forming the work even if the displaced employees received the same training as the employer
9 has given any other new hires.

10 (b) The employer shall retain those displaced employees accepting positions for at least
11 90 workdays unless the employer can prove by clear and convincing evidence that their job
12 performance or conduct provided just cause for their discharge.

13 (c) Nothing in this subsection may be construed to interfere with the discretion of the
14 employer to select which employees to assign supervisory or management duties or to man-
15 date that a new employer replacing another employer continue to operate at the same
16 staffing level.

17 (4)(a) An employer shall give controlling weight to seniority in making decisions between
18 nonsupervisory employees as to layoff, promotion to nonsupervisory positions, and assign-
19 ment of shifts or stations where applicable, if those decisions impact the employees' income,
20 health or family responsibilities.

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

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

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

30 (c) An employer using part-time employees shall offer those employees any additional
31 hours of work that become available due to employee turnover, increased business or other
32 reasons, rather than engaging a new part-time employee to work those hours. Nothing in
33 this subsection may be construed to require the employer to offer more than 40 hours of
34 work per week to any employee.

35 (d) The employer shall keep the hours of work for each employee at more than the level
36 required to maintain eligibility for benefits provided by the employer or required by law un-
37 less the employer shows by clear and convincing evidence that the reduction in hours below
38 that level is a business necessity or has been requested by the employee.

39 (6)(a) On or before a new employee's first day of work, the employer shall inform the
40 employee in writing of the employee's work schedule and the minimum number of expected
41 work hours the employee will be assigned to work per month.

42 (b) Except as provided in paragraph (c) of this subsection, if the employer changes the
43 work schedule of an employee that was provided to the employee pursuant to paragraph (a)
44 of this subsection, the employer shall provide to the employee the new work schedule in
45 writing not less than 14 days before the first day of the new work schedule. If the expected

1 minimum number of work hours an employee will be assigned changes as a result of the new
 2 work schedule, the employer shall also provide notification of the change of the minimum
 3 number of hours assigned to the employee not less than 14 days in advance of the first day
 4 the change will take effect.

5 (c) The employer may make work schedule changes as needed, including offering addi-
 6 tional hours of work to employees beyond those previously scheduled. An employer that
 7 changes the work schedule of an employee with less than 24 hours' notice prior to the start
 8 of the changed shift shall provide one extra hour of pay at the employee's regular hourly
 9 wage rate for each shift that is changed with less than 24 hours' notice, except in the case
 10 of the need to schedule the employee due to the unforeseen unavailability of another em-
 11 ployee previously scheduled to work that shift.

12 (d) The notifications required under this subsection must be made to the employee in
 13 writing. The notifications may be provided through electronic mail or electronic texting.
 14 Nothing in this subsection shall be construed as prohibiting an employer from using any ad-
 15 ditional means of notifying an employee of the work schedule.

16 (e) If work schedules are not consistent, the employer shall post the work schedule for
 17 all employees in a conspicuous place so as to permit all employees to read the work schedule.
 18 Availability of the work schedule by electronic means accessible by all employees of the em-
 19 ployer constitutes compliance with this paragraph.

20 (f) Nothing in this subsection may be construed to prevent the employer from allowing
 21 an employee to work in place of another employee who has been scheduled to work a par-
 22 ticular shift as long as the change in schedule is mutually agreed upon by the employees.
 23 The employer is not subject to the requirements of paragraphs (b) to (d) of this subsection
 24 for voluntary shift trades.

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

28 (7) Except as provided in this subsection, an employee may not be scheduled to work a
 29 split shift. All work scheduled for an employee in a workday shall be continuous except for
 30 rest and meal periods, none of which may exceed one hour in duration. Split shifts shall be
 31 allowed when requested by a employee and mutually agreed upon by the employee and the
 32 employer. If an employee who has voluntarily agreed with the employer to work a split shift
 33 vacates the position, the position shall be restored to a shift of consecutive hours.

34 (8) An employee's days off must be scheduled consecutively except as required by busi-
 35 ness necessity, or if otherwise requested in writing by the employee upon the employee's sole
 36 initiative. If an employee is required to work without consecutive days off, the employee shall
 37 be paid additional day's wages at the employee's regular hourly wage rate for any workweek
 38 in which the employee is not provided two consecutive days off. This subsection does not
 39 apply to salaried exempt employees.

40 (9) The employer shall pay an employee:

41 (a) For at least four hours at the employee's regular hourly wage rate for each day the
 42 employee reports for work under specific instructions from the employer but is provided with
 43 less than four hours of work. If the employee's scheduled hours are less than four hours, the
 44 employee shall be paid for the employee's scheduled hours for that day even if the employee
 45 is provided with less than the scheduled hours of work.

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

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

12 (11) An employer shall pay, out of the employer's general assets, the amount of earnings
 13 missed by an employee due to time spent by the employee in responding to a summons for
 14 jury duty. Any juror fees paid to the employee by the court for time spent by the employee
 15 in responding to a summons for jury duty shall be turned over to the employer by the em-
 16 ployee.

17 (12) An employer and a business operating under a contract with the Port of Portland
 18 and a business functioning as common-law employer, or a business that engages independent
 19 contractors to work regularly on or out of the premises controlled by a business operating
 20 under a contract with the Port of Portland, whose work is part of the regular economic ac-
 21 tivity of the contracting business, or a business that engages a temporary agency or labor
 22 contractor to provide labor to work regularly on its premises at a property owned or con-
 23 trolled by the Port of Portland, are jointly and severally liable for violation of sections 1 to
 24 8 this 2015 Act.

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

26 (A) Maintain and preserve for at least three years a record of each employee's name,
 27 address, job classifications, regular hourly wage rates, hours worked, leave and benefits ac-
 28 crued and used, and reasons for termination, if any.

29 (B) Submit a copy of the records required to be maintained under this paragraph to the
 30 Port of Portland by March 31, June 30, September 30 and December 31 of each year.

31 (b) If an employer fails to provide a copy of the required records within five days of a
 32 due date described in paragraph (a) of this subsection, the port shall assess the employer a
 33 penalty of \$500 per day.

34 (2) An employer shall give written notification to each current employee, and to each new
 35 employee at time of hire, of the rights of the employee under sections 1 to 8 of this 2015 Act.
 36 The notification shall be in the form provided by the Port of Portland, in English, Spanish
 37 and any other languages spoken by a significant number of the employees, and shall be
 38 posted prominently in areas at the work site where all employees will see the notice.

39 (3) An employer shall permit access to work sites and relevant payroll records for au-
 40 thorized representatives of the Port of Portland and the State of Oregon for the purposes
 41 of:

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

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

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

1 (d) Producing for inspection and copying any payroll records for any or all persons em-
2 ployed by the employer; and

3 (e) Providing opportunities for representatives of any nonprofit organization in the in-
4 dustry of the employer involved with the enforcement of labor standards to have access to
5 the workforce of the employer during nonworking hours and in nonwork areas for the pur-
6 pose of ensuring compliance with sections 1 to 8 of this 2015 Act.

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

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

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

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

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

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

21 **SECTION 8.** (1)(a) A person claiming injury from a violation of sections 1 to 8 of this 2015
22 Act may bring an action against the employer in a court of competent jurisdiction to enforce
23 the provisions of sections 1 to 8 of this 2015 Act.

24 (b) If a violation is proven, the complainant shall be entitled to all appropriate remedies,
25 including but not limited to back pay, reinstatement, injunctive relief and reasonable attor-
26 ney fees and costs and disbursements.

27 (2) In addition to any relief awarded under this section, an employee who proves a vio-
28 lation of sections 1 to 8 of this 2015 Act may recover treble the amount of the value of the
29 lost regular wages and benefits, together with statutory interest thereon, and any conse-
30 quential damages suffered by the employee.

31 **SECTION 9.** This 2015 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
33 on its passage.

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