

# Senate Bill 718

Sponsored by COMMITTEE ON WORKFORCE

## 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**.

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 ORS 652.320, 652.610,  
3 652.750, 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 otherwise:

7 (1) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

8 (2) "Employ" includes to suffer or permit to work but does not include voluntary or donated  
9 services performed for no compensation or without expectation or contemplation of compensation  
10 as the adequate consideration for the services performed for a public employer referred to in sub-  
11 section (3) of this section, or a religious, charitable, educational, public service or similar nonprofit  
12 corporation, organization or institution for community service, religious or humanitarian reasons or  
13 for services performed by general or public assistance recipients as part of any work training pro-  
14 gram administered under the state or federal assistance laws.

15 (3) "**Employee**" means an individual employed by an employer in this state.

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

19 [(4)] (5) "Minor" means any person under 18 years of age.

20 [(5)] (6) "Occupation" means any occupation, service, trade, business, industry, or branch or  
21 group of industries or employment or class of employment in which employees are gainfully em-  
22 ployed.

23 [(6)] (7) "Organized camp" means a day or resident camp, whether or not operated for profit,  
24 established to give campers recreational, creative, religious or educational experience in cooperative  
25 group living wherein the activities are conducted on a closely supervised basis, whether or not the  
26 camp is used primarily by an organized group or by members of the public and whether or not the

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 activities or facilities are furnished free of charge or for the payment of a fee.

2 [(7)] (8) “Outside salesperson” means any employee who is employed for the purpose of and who  
3 is customarily and regularly engaged away from the employer’s place or places of business in mak-  
4 ing sales, or obtaining orders, or obtaining contracts for services and whose hours of work of any  
5 other nature for the employer do not exceed 30 percent of the hours worked in the workweek by the  
6 nonexempt employees of the employer.

7 [(8)] (9) “Piece-rate” means a rate of pay calculated on the basis of the quantity of the crop  
8 harvested.

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

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

17 [(11)] (12) “Work time” includes both time worked and time of authorized attendance.

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

19 652.320. As used in ORS 652.310 to 652.414, unless the context requires otherwise:

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

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

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

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

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

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

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

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

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

2        658.005. As used in ORS 658.005 to 658.245, unless the context requires otherwise:

3        (1) “Applicant for employment” or “applicant” means an individual who is seeking or who has  
4 obtained employment through the services of an employment agency.

5        (2) “Charge for services” means any money or other consideration paid or promised to be paid  
6 by an applicant for employment for services rendered by an employment agency.

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

8        (4)(a) “Employment agency” or “agency” means a business, service, bureau or club operated by  
9 a person, firm, organization, limited liability company or corporation engaged in procuring for a fee,  
10 employment for others and employees for employers.

11        (b) “Employment agency” or “agency” does not include:

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

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

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

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

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

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

24        658.405. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires  
25 otherwise:

26        (1) “Agricultural association” means a nonprofit or cooperative association of farmers, growers  
27 or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor  
28 solely on behalf of members of the association.

29        (2)(a) “Construction labor contractor” includes any person that:

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

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

34        (C) Enters into a subcontract with another for any of the activities described in subparagraph  
35 (A) or (B) of this paragraph.

36        (b) “Construction labor contractor” does not include:

37        (A) A person that has a construction contract with an owner of real property where the con-  
38 struction work is performed;

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

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

42        (D) An owner of real property engaged in the solicitation or recruitment of persons to perform  
43 construction work on the owner’s property;

44        (E) The Employment Department;

45        (F) A crew leader;

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

3 (H) An educational institution that is recognized as such by the Department of Education;

4 (I) A labor union;

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

6 (K) A staffing agency whose primary purpose is to provide workers to the client employers of  
7 the agency under the terms of a client agreement, if the agency provides workers' compensation  
8 coverage for all employees as required by ORS chapter 656 and pays employment and income taxes  
9 in accordance with applicable law.

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

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

15 (A) For an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers  
16 to perform labor for another person to work in forestation or reforestation of lands, including but  
17 not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and  
18 seedlings, the clearing, piling and disposal of brush and slash and other related activities;

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

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

23 (D) Recruits, solicits, supplies or employs workers on behalf of an employer engaged in these  
24 activities;

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

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

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

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

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

34 (B) The Employment Department;

35 (C) A crew leader;

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

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

41 (F) An educational institution that is recognized as such by the Department of Education;

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

1 (H) A labor union.

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

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

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

5 652.750. (1) As used in this section:

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

7 (b) "Personnel records" does not include records of an individual relating to the conviction, ar-  
8 rest or investigation of conduct constituting a violation of the criminal laws of this state or another  
9 state or the United States, confidential reports from previous employers or records maintained in  
10 compliance with ORS 351.065.

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

12 **(d) "Time and pay records" means any documents that record the times an employee**  
13 **started or stopped work, rest and meal periods received or total hours worked, documents**  
14 **required under ORS 652.610 and any other documents used to determine the gross or net**  
15 **wages of an employee.**

16 (2) Except as provided in subsection [(7)] (9) of this section, within 45 days after receipt of an  
17 employee's request, an employer shall provide reasonable opportunity for the employee to inspect,  
18 at the place of employment or place of work assignment, the personnel records of the employee that  
19 are used or have been used to determine the employee's qualification for employment, promotion,  
20 additional compensation [or], employment termination or other disciplinary action **and time and**  
21 **pay records of the employee.** Within 45 days after receipt of the employee's request, the employer  
22 shall furnish a certified copy of the records.

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

24 (a) The terminated employee's personnel records for not less than 60 days. Within the 60-day  
25 period, the employer shall provide the employee with a certified copy of the records within 45 days  
26 of receiving the employee's request. After the 60-day period, the employer shall provide the certified  
27 copy within 45 days of receiving the employee's request if the employer has the records at the time  
28 of the request.

29 **(b) The terminated employee's time and pay records for not less than three years. The**  
30 **employer shall provide the employee with a certified copy of the employee's time and pay**  
31 **records within 45 days of receiving the employee's request. After the three-year period, the**  
32 **employer shall provide the certified copy within 45 days of receiving the employee's request**  
33 **if the employer has the records at the time of the request.**

34 (4) Notwithstanding the time periods described in subsections (2) and (3) of this section, if the  
35 employee's personnel records **or time and pay records** are not readily available, the employer and  
36 the employee may agree to extend the time within which the employer must provide the employee  
37 reasonable opportunity to inspect the records or furnish the employee a certified copy of the re-  
38 cords.

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

42 **(6) Upon receipt of a written request from a terminated employee, an employer shall**  
43 **provide to the employee a full, succinct and complete written statement of the reason or**  
44 **reasons for the termination of the employee. The statement shall be provided to the em-**  
45 **ployee within 10 days after the request has been made.**

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

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

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

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

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

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

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

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

31       653.055. (1) Any employer who pays an employee less than the wages to which the employee is  
 32 entitled under ORS 653.010 to 653.261 **by the regular payday established by the employer as**  
 33 **required by ORS 652.120** is liable to the employee affected:

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

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

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

39       (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in  
 40 connection with a wage claim based on ORS 653.010 to 653.261 as the commissioner has under ORS  
 41 652.310 to 652.445 and in addition the commissioner may, without the necessity of assignments of  
 42 wage claims from employees, initiate suits against employers to enjoin future failures to pay re-  
 43 quired minimum wages or overtime pay and to require the payment of minimum wages and overtime  
 44 pay due employees but not paid as of the time of the filing of suit. The commissioner may join in a  
 45 single proceeding and in one cause of suit any number of wage claims against the same employer.

1 If the commissioner does not prevail in such action, the commissioner shall pay all costs and dis-  
 2 bursements from the Bureau of Labor and Industries Account.

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

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

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

13 **(b) The statement required under this subsection must be a written statement suffi-**  
 14 **ciently itemized to show:**

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

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

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

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

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

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

22 **(G) Gross wages;**

23 **(H) Net wages;**

24 **(I) The amount and purpose of each deduction made during the respective period of ser-**  
 25 **vice that the payment covers;**

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

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

31 **(L) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the**  
 32 **number of pieces completed at each piece rate and the total pay for each rate.**

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

35 (b) The statement may be attached to or be a part of the check, draft, voucher or other instru-  
 36 ment by which payment is made, or may be delivered separately from the instrument.

37 (c) The statement shall be provided electronically at the time payment is made to all state offi-  
 38 cers and employees paid electronically under the state payroll system as provided by ORS 292.026.

39 (d) State agencies shall provide access to electronic statements to employees who do not have  
 40 regular access to computers in their workplace.

41 (e) Notwithstanding paragraph (c) of this subsection, if an officer or employee paid under the  
 42 state payroll system as provided by ORS 292.026 wants to receive payment of net salary and wages  
 43 by check or to receive a paper statement of itemized payroll deductions, the officer or employee  
 44 shall request paper statements or payment by check in accordance with the procedures adopted by  
 45 rule by the **Oregon Department of Administrative Services.**

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

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

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

5 (c) The employee has voluntarily signed an authorization for a deduction for any other item,  
6 provided that the ultimate recipient of the money withheld is not the employer and that the de-  
7 duction is recorded in the employer's books;

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

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

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

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

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

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

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

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

22 (4) When an employer deducts an amount from an employee's wages as required or authorized  
23 by law or agreement, the employer shall pay the amount deducted to the appropriate recipient as  
24 required by the law or agreement. The employer shall pay the amount deducted within the time re-  
25 quired by the law or the agreement or, if the time for payment is not specified by the law or  
26 agreement, within seven days after the date the wages from which the deductions are made are due.  
27 Failure to pay the amount as required constitutes an unlawful deduction.

28 (5) This section does not:

29 (a) Prohibit the withholding of amounts authorized in writing by the employee to be contributed  
30 by the employee to charitable organizations, including contributions made pursuant to ORS 243.666  
31 and 663.110;

32 (b) Prohibit deductions by checkoff dues to labor organizations or service fees when the de-  
33 ductions are not otherwise prohibited by law; or

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

36 **SECTION 8. (1)(a) An employee has a right of civil action for a claim for unpaid wages,**  
37 **as defined in ORS 653.010, against an employer in the full amount of the employee's unpaid**  
38 **wages due as provided under ORS 652.110, 652.120, 652.130, 652.140, 652.145, 652.150, 652.160,**  
39 **652.170, 652.190, 652.200, 652.220, 652.230, 652.240, 652.250, 652.260 and 653.055. An employee may**  
40 **bring an action under this section against an employer without first filing a claim for unpaid**  
41 **wages with the Bureau of Labor and Industries under ORS 652.310 to 652.414.**

42 **(b) An employee who has a claim against an employer under this section or the assignee**  
43 **of an employee who has filed a wage claim with the Commissioner of the Bureau of Labor**  
44 **and Industries may file a notice of lis pendens upon all property of the employer, real and**  
45 **personal, located in this state for the amount of the unpaid wages to which the employee**



1 claims to be entitled. With respect to real property the notice may be filed with the county  
2 clerk of the county in which the real property is located. With respect to personal property  
3 the notice may be filed with the Secretary of State. Upon receipt of the notice, any required  
4 filing fee and proof of service upon the employer by certified mail:

5 (A) The county clerk shall enter the notice of lis pendens in the County Clerk Lien Re-  
6 cord.

7 (B) The Secretary of State shall include the notice of lis pendens that is filed under this  
8 subsection in the index maintained by the secretary for filing financing statements pursuant  
9 to ORS chapter 79.

10 (2) A notice of lis pendens under subsection (1) of this section must be a written state-  
11 ment that:

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

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

16 (c) Specifies:

17 (A) The nature and basis of the claim;

18 (B) The amount claimed;

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

21 (D) That the person filing the notice will claim a lien on the property.

22 (3)(a) A notice of lis pendens established under subsection (1) of this section expires if  
23 the employee or the assignee of the employee does not bring an action or proceeding to es-  
24 tablish the liability of the employer for the wages claimed in a forum of competent jurisdic-  
25 tion within 120 days after the notice of lis pendens is filed, or does not within that time file  
26 notice of the filing of the action or proceeding with the county clerk or Secretary of State,  
27 as applicable.

28 (b) Any interested party may file a certified copy of the final judgment in an action or  
29 proceeding to establish the liability of the employer for the wages claimed with the county  
30 clerk or Secretary of State, as applicable. If the forum has found that no wages are due, the  
31 notice of lis pendens is void as of the filing of the final judgment.

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

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

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

39 (c) Request an ex parte review by the Commissioner of the Bureau of Labor and Indus-  
40 tries of the representations made in the notice of lis pendens to determine whether the re-  
41 presentations establish a prima facie case that the wages claimed are owed by the employer  
42 to the person claiming them. The commissioner may review the notice and accompanying  
43 declaration on an expedited basis, without hearing, and without the filing of any action or  
44 proceeding, and may void the notice of lis pendens for failure to establish a prima facie case.  
45 Either party may seek review of the determination of the commissioner by filing an action

1 for declaratory relief naming as parties the employer and employee and not naming the  
2 commissioner;

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

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

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

15 (g) Take no action, and wait for the notice to expire or become void pursuant to sub-  
16 section (3) of this section.

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

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

20 (b) The treasurer of the county in which the bond was filed or deposit was made shall:

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

24 (B) Upon entry of the final judgment in an action or proceeding to resolve the liability  
25 of the employer to the employee, pay any amount the court determines to be owed to the  
26 employee or, if no amount is owed, release the bond or return the deposit to the person who  
27 filed the bond or made the deposit.

28 (c) If an employee or assignee who has filed a notice of lis pendens establishes in an  
29 action or proceeding to resolve the liability of the employer to the employee that the em-  
30 ployee is owed wages by the employer, the employee or assignee is entitled to judgment  
31 against the sureties upon the bond or against the moneys deposited.

32 (6) An employee who is owed wages by an employer in this state has a lien upon all  
33 property of the employer, real and personal, located in this state for the amount of the un-  
34 paid wages to which the employee is entitled.

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

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

39 (B) Files proof of the amount of wages owed in the form of a court judgment, wage order  
40 determined by the commissioner or acknowledgement of wage debt made by the employer  
41 with the county clerk of the county in which the real property is located;

42 (C) Pays any required filing fees; and

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

45 (b) The county clerk shall enter notice of a perfected lien established under this sub-

1 section in the County Clerk Lien Record.

2 (c) A lien under subsection (6) of this section upon personal property is perfected if the  
3 employee or the assignee of the employee:

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

5 (B) Files proof of the amount of wages owed in the form of a court judgment, wage order  
6 determined by the commissioner or acknowledgement of wage debt made by the employer  
7 with the Secretary of State;

8 (C) Pays any required filing fees; and

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

11 (d) The Secretary of State shall include notice of a perfected lien established under this  
12 subsection in the index maintained by the secretary for filing financing statements pursuant  
13 to ORS chapter 79.

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

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

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

28 (b) Notwithstanding paragraph (a) of this subsection, a lien established under subsection  
29 (6) of this section has priority for the first \$3,000 of the lien amount over a lien of a com-  
30 mercial lending institution that was originated before the lien established under subsection  
31 (6) of this section takes effect.

32 (10) A lien claimant who fails to establish that the employer is indebted to the lien  
33 claimant and is found by the court to have filed a frivolous claim or a claim without a rea-  
34 sonable basis is liable to the employer for the greater of \$500 or the actual costs the em-  
35 ployer incurred in complying with the requirements of this section.

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

40 **SECTION 9.** (1) There is hereby created a private cause of action for violation of ORS  
41 652.610 (1) or (2), ORS 652.750 and section 10 of this 2015 Act.

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

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

45 (b) Statutory damages of \$50 per day for each working day that the violation occurred

1 or continues to occur or \$500, whichever is greater less;

2 (c) Reasonable attorney fees and costs; and

3 (d) Other appropriate relief, including injunctive and declaratory relief, that the court  
4 deems necessary or appropriate.

5 (3)(a) In addition to any other penalty provided by law, the Commissioner of the Bureau  
6 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person  
7 who violates ORS 652.610 (1) or (2), ORS 652.750 or section 10 of this 2015 Act or any rule  
8 adopted under this 2015 Act.

9 (b) Civil penalties under this subsection shall be imposed as provided in ORS 183.745.

10 (c) All sums collected as penalties under this subsection shall be applied first toward re-  
11 imbursement of costs incurred in determining the violations, conducting hearings under this  
12 subsection and addressing and collecting penalties. The remainder, if any, of the sums col-  
13 lected as penalties under this subsection shall be paid into the State Treasury and credited  
14 to the General Fund and is available for general governmental expenses.

15 **SECTION 10.** An employer may not discharge, retaliate against or in any other manner  
16 discriminate against an employee or applicant for employment because the employee or ap-  
17 plicant:

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

19 (2) Has discussed, inquired or consulted with an attorney, a state or federal agency, a  
20 collective bargaining representative, a worker advocacy organization or a coworker con-  
21 cerning rights granted under this 2015 Act.

22 (3) Has made a statement at or in contemplation of a hearing, grievance or arbitration  
23 or to the press in support of a claim or that the provisions of this 2015 Act or any rule re-  
24 lated to this Act has been violated.

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

27 (5) Has testified, is about to testify or has prepared to testify in any proceeding or has  
28 participated in an investigation of a claim under or related to this 2015 Act or to the col-  
29 lection of wages.

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

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

34 **SECTION 11.** For purposes of ORS chapters 652, 653 and 658, an individual performing  
35 services that are an integral part of the business of an employer is presumed to be an em-  
36 ployee of the employer. This presumption may be rebutted by evidence demonstrating that  
37 the individual was not authorized or permitted to perform services for the employer.

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

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