

A-Engrossed
Senate Bill 1587

Ordered by the Senate February 15
Including Senate Amendments dated February 15

Sponsored by Senators DEMBROW, BURDICK, COURTNEY; Senator ROSENBAUM (Presession filed.)

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.

Modifies information that must be included in itemized statement provided to employee each pay period. Requires employer to maintain time and pay records of terminated employee for *[three years]* **not less than period required by Fair Labor Standards Act and accompanying regulations** from date of termination and to provide records to employee if requested. *[Establishes civil right of action for violation.]*

[Authorizes Commissioner of Bureau of Labor and Industries to require employer that has not established regular payday to provide bond or cease conducting business until employer has provided bond.] Authorizes Commissioner **of Bureau of Labor and Industries** to expend certain moneys in Wage Security Fund to administer and enforce provisions of wage and hour and minimum wage law **and to fund three full-time positions to investigate and enforce claims of underpaid and unpaid wages.**

Prohibits contractor or subcontractor, or contractor's or subcontractor's agent, from intentionally failing to pay prevailing rate of wage, reducing rate of wage for work that is not subject to prevailing wage in order to recoup prevailing wages that contractor, subcontractor or agent paid, withholding, deducting or diverting employee's wages other than as provided by law, entering into agreement under terms of which employee receives less than prevailing rate of wage for work that is subject to prevailing rate of wage, or otherwise permanently or indefinitely depriving employee of certain amount of prevailing wages employee is due. Punishes violation by maximum of five years' imprisonment, \$125,000 fine, or both. Authorizes commissioner to adopt rules.

Becomes operative January 1, 2017.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to wages; creating new provisions; amending ORS 652.409, 652.610 and 652.750; and de-
3 clarating an emergency.

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

5 **SECTION 1.** 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,
9 *[and withholding for any purpose any sum of money from the wages, salary or commission earned by*
10 *an 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.] shall provide the employee on regular paydays and at other times payment*
13 **of wages, salary or commission is made, with an itemized statement as described in para-**
14 **graph (b) of this subsection.**

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

17 **(A) The date of the payment;**

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 **(B) The dates of work covered by the payment;**
2 **(C) The name of the employee;**
3 **(D) The name and business registry number or business identification number;**
4 **(E) The address and telephone number of the employer;**
5 **(F) The rate or rates of pay;**
6 **(G) Whether the employee is paid by the hour, shift, day or week or on a salary, piece**
7 **or commission basis;**
8 **(H) Gross wages;**
9 **(I) Net wages;**
10 **(J) The amount and purpose of each deduction made during the respective period of ser-**
11 **vice that the payment covers;**
12 **(K) Allowances, if any, claimed as part of minimum wage;**
13 **(L) Unless the employee is paid on a salary basis and is exempt from overtime compen-**
14 **sation as established by local, state or federal law, the regular hourly rate or rates of pay,**
15 **the overtime rate or rates of pay, the number of regular hours worked and pay for those**
16 **hours, and the number of overtime hours worked and pay for those hours; and**
17 **(M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the**
18 **number of pieces completed at each piece rate and the total pay for each rate.**
19 *[(2)(a) The itemized statement shall be provided to the employee at the time payment of wages,*
20 *salary or commission is made.]*
21 **[(b)] (2)(a)** The statement may be attached to or be a part of the check, draft, voucher or other
22 instrument by which payment is made, or may be delivered separately from the instrument.
23 **[(c)] (b)** The statement shall be provided electronically at the time payment is made to all state
24 officers and employees paid electronically under the state payroll system as provided by ORS
25 292.026.
26 **[(d)] (c)** State agencies shall provide access to electronic statements to employees who do not
27 have regular access to computers in their workplace.
28 **[(e)] (d)** Notwithstanding paragraph **[(c)] (b)** of this subsection, if an officer or employee paid
29 under the state payroll system as provided by ORS 292.026 wants to receive payment of net salary
30 and wages by check or to receive a paper statement of itemized payroll deductions, the officer or
31 employee shall request paper statements or payment by check in accordance with the procedures
32 adopted by rule by the **Oregon Department of Administrative Services**.
33 (3) An employer may not withhold, deduct or divert any portion of an employee's wages unless:
34 (a) The employer is required to do so by law;
35 (b) The deductions are **voluntarily** authorized in writing by the employee, are for the employee's
36 benefit and are recorded in the employer's books;
37 (c) The employee has voluntarily signed an authorization for a deduction for any other item,
38 provided that the ultimate recipient of the money withheld is not the employer and that the de-
39 duction is recorded in the employer's books;
40 (d) The deduction is authorized by a collective bargaining agreement to which the employer is
41 a party;
42 (e) The deduction is authorized under ORS 18.736; or
43 (f) The deduction is made from the payment of wages upon termination of employment and is
44 authorized pursuant to a written agreement between the employee and employer for the repayment
45 of a loan made to the employee by the employer, if all of the following conditions are met:

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

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

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

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

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

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

15 (5) This section does not:

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

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

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

23 **SECTION 2.** ORS 652.750 is amended to read:

24 652.750. (1) As used in this section:

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

26 (b) "Personnel records" does not include records of an individual relating to the conviction, ar-
27 rest or investigation of conduct constituting a violation of the criminal laws of this state or another
28 state or the United States, confidential reports from previous employers or records maintained in
29 compliance with ORS 352.226.

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

31 (d) **"Time and pay records" means payroll records and other records and data described**
32 **under the administrative rules established by the Bureau of Labor and Industries pursuant**
33 **to ORS 653.010 to 653.261.**

34 (2) Except as provided in subsection (7) of this section, within 45 days after receipt of an
35 employee's request, an employer shall provide reasonable opportunity for the employee to inspect,
36 at the place of employment or place of work assignment, the personnel records of the employee that
37 are used or have been used to determine the employee's qualification for employment, promotion,
38 additional compensation, [or] employment termination or other disciplinary action **and time and**
39 **pay records of the employee for the period required by the Fair Labor Standards Act, 29**
40 **U.S.C. 211(c), and accompanying regulations.** Within 45 days after receipt of the employee's re-
41 quest, the employer shall furnish a certified copy of the records.

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

43 (a) The terminated employee's personnel records for not less than 60 days. [*Within the 60-day*
44 *period, the employer shall provide the employee with a certified copy of the records within 45 days of*
45 *receiving the employee's request. After the 60-day period, the employer shall provide the certified copy*

1 *within 45 days of receiving the employee's request if the employer has the records at the time of the*
2 *request.]*

3 **(b) The terminated employee's time and pay records for not less than the period required**
4 **by the Fair Labor Standards Act, 29 U.S.C. 211(c), and accompanying regulations.**

5 (4) Notwithstanding the time periods described in [subsections] **subsection (2) [and (3)]** of this
6 section, if the employee's personnel records **or time and pay records** are not readily available, the
7 employer and the employee may agree to extend the time within which the employer must provide
8 the employee reasonable opportunity to inspect the records or furnish the employee a certified copy
9 of the records.

10 (5) For the services referred to in [subsections] **subsection (2) [and (3)]** of this section only, an
11 employer may charge an employee no more than an amount reasonably calculated to recover the
12 actual cost of providing the services.

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

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

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

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

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

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

36 **SECTION 3.** ORS 652.409 is amended to read:

37 652.409. (1) The Wage Security Fund is established separate and distinct from the General Fund.
38 After deduction of the amounts provided in ORS 657.439 (2)(a), all moneys received by the Employ-
39 ment Department pursuant to ORS 657.439 (2)(a) shall be paid into the State Treasury and credited
40 to the Wage Security Fund. All income earned on moneys in the Wage Security Fund invested by
41 the State Treasurer shall accrue to the fund.

42 (2) All income earned on moneys in the Wage Security Fund, and all other moneys in the fund,
43 are appropriated continuously to the Commissioner of the Bureau of Labor and Industries **primarily**
44 to carry out the provisions of ORS 652.414. **Appropriations to the commissioner under this**
45 **subsection may also be used to fund, within the division of the Bureau of Labor and Indus-**

1 tries that enforces wage and hour laws, three full-time positions to investigate and enforce
2 claims of underpaid and unpaid wages under ORS chapters 652 and 653.

3 **SECTION 4.** (1) A contractor or subcontractor, or an agent of a contractor or subcon-
4 tractor, may not intentionally:

5 (a) Fail to pay an employee of the contractor or subcontractor the prevailing rate of wage
6 as provided in ORS 279C.840;

7 (b) Reduce the rate of wage that an employee would ordinarily receive for work that is
8 not subject to ORS 279C.800 to 279C.870 in order to recoup wages the contractor, subcon-
9 tractor or agent paid in accordance with ORS 279C.840;

10 (c) Withhold, deduct or divert any portion of an employee's wages except as provided in
11 ORS 652.610 (3);

12 (d) Enter into an agreement with an employee under the terms of which the employee
13 performs work on a public works project at less than the prevailing rate of wage; or

14 (e) Otherwise deprive an employee, permanently or indefinitely, of wages due to an em-
15 ployee under ORS 279C.840 in an amount that equals or exceeds 25 percent of wages due to
16 the employee under ORS 279C.840 or \$1,000 in a single pay period, whichever is greater.

17 (2) A violation of subsection (1) of this section is a Class C felony.

18 (3) In addition to and not in lieu of any action the Commissioner of the Bureau of Labor
19 and Industries may bring under ORS 279C.870, the commissioner may:

20 (a) Refer a violation of subsection (1) of this section to a district attorney or the Attor-
21 ney General for prosecution; and

22 (b) Adopt rules necessary to implement the provisions of this section.

23 **SECTION 5.** (1) Section 4 of this 2016 Act and the amendments to ORS 652.409, 652.610
24 and 652.750 by sections 1 to 3 of this 2016 Act become operative on January 1, 2017.

25 (2) The Commissioner of the Bureau of Labor and Industries may adopt rules and take
26 any other action before the operative date specified in subsection (1) of this section that is
27 necessary to enable the commissioner, on or after the operative date specified in subsection
28 (1) of this section, to exercise all of the duties, functions and powers conferred on the com-
29 missioner by section 4 of this 2016 Act and the amendments to ORS 652.409, 652.610 and
30 652.750 by sections 1 to 3 of this 2016 Act.

31 **SECTION 6.** This 2016 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect
33 on its passage.

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