

# Senate Bill 1587

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 **as introduced**.

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 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 to expend certain moneys in Wage Security Fund to administer and enforce provisions of wage and hour and minimum wage law.

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 652.125, 652.340, 652.409, 652.610 and  
3 652.750; and declaring 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;**

18 (B) **The dates of work covered by the payment;**

19 (C) **The name of the employee;**

20 (D) **The name and tax identification number of the employer;**

21 (E) **The address and telephone number of the employer;**

22 (F) **The rate or rates of pay;**

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

3 (H) Gross wages;

4 (I) Net wages;

5 (J) The amount and purpose of each deduction made during the respective period of ser-  
 6 vice that the payment covers;

7 (K) Allowances, if any, claimed as part of minimum wage;

8 (L) Unless the employee is paid on a salary basis and is exempt from overtime compen-  
 9 sation as established by local, state or federal law, the regular hourly rate or rates of pay,  
 10 the overtime rate or rates of pay, the number of regular hours worked and pay for those  
 11 hours, and the number of overtime hours worked and pay for those hours; and

12 (M) If the employee is paid a piece rate, the applicable piece rate or rates of pay, the  
 13 number of pieces completed at each piece rate and the total pay for each rate.

14 [(2)(a) *The itemized statement shall be provided to the employee at the time payment of wages,  
 15 salary or commission is made.*]

16 [(b)] (2)(a) The statement may be attached to or be a part of the check, draft, voucher or other  
 17 instrument by which payment is made, or may be delivered separately from the instrument.

18 [(c)] (b) The statement shall be provided electronically at the time payment is made to all state  
 19 officers and employees paid electronically under the state payroll system as provided by ORS  
 20 292.026.

21 [(d)] (c) State agencies shall provide access to electronic statements to employees who do not  
 22 have regular access to computers in their workplace.

23 [(e)] (d) Notwithstanding paragraph [(c)] (b) of this subsection, if an officer or employee paid  
 24 under the state payroll system as provided by ORS 292.026 wants to receive payment of net salary  
 25 and wages by check or to receive a paper statement of itemized payroll deductions, the officer or  
 26 employee shall request paper statements or payment by check in accordance with the procedures  
 27 adopted by rule by the **Oregon Department of Administrative Services**.

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

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

30 (b) The deductions are **voluntarily** authorized in writing by the employee, are for the employee's  
 31 benefit and are recorded in the employer's books;

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

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

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

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

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

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

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

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

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

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

10 (5) This section does not:

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

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

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

18 **(6) An employer's failure to provide an itemized statement as required by subsection (1)**  
 19 **of this section tolls the statute of limitations for recovery of any wages or damages sup-**  
 20 **ported by that statement until the statement has been provided to the employee.**

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

22 652.750. (1) As used in this section:

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

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

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

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

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

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

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

1       **(b) The terminated employee's time and pay records for not less than three years.**

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

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

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

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

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

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

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

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

33       **(8) In addition to any other remedy, an affected employee may bring a private cause of**  
34 **action for violation of subsection (2) of this section.**

35       **(9) Upon finding a violation of subsection (2) of this section, the court shall award the**  
36 **aggrieved person:**

37       **(a) Actual damages;**

38       **(b) Upon occurrence of the later of the day this section requires compliance or the eighth**  
39 **day after the employee has mailed to the employer a written demand for compliance that**  
40 **references this section, statutory damages of \$50 per day for each day that the violation**  
41 **continues, up to a maximum of \$5,000;**

42       **(c) Reasonable attorney fees and costs; and**

43       **(d) Other necessary or appropriate relief as determined by the court, including but not**  
44 **limited to injunctive and declaratory relief.**

45       **(10) An employer's failure to provide records as required by this section tolls the statute**

1 **of limitations for recovery of any wages or damages supported by those records until the**  
 2 **records have been provided to the employee.**

3 **SECTION 3.** ORS 652.125 is amended to read:

4 652.125. (1) If, upon complaint by an employee, and after investigation, it appears to the Com-  
 5 missioner of the Bureau of Labor and Industries that an employer [*is failing to pay wages within five*  
 6 *days of a payday scheduled by the employer,*] **has failed to establish or maintain a regular payday**  
 7 **as required by ORS 652.120**, the commissioner may require the employer to [*give a bond in such*  
 8 *amount as*] **provide a bond in an amount that** the commissioner determines necessary, with suffi-  
 9 cient surety, to [*assure*] **ensure** timely payment of wages due employees for [*such*] **a** future period  
 10 [*as*] **that** the commissioner considers appropriate. In lieu of a bond, the commissioner may accept  
 11 a letter of credit from an issuer approved by the commissioner, upon [*such*] terms and conditions  
 12 and for [*such*] **an** amount [*as*] **that** the commissioner determines necessary to [*assure*] **ensure** timely  
 13 payment of wages for [*such*] **a** future period [*as*] **that** the commissioner determines appropriate.

14 (2) If[,] **an employer fails to provide the required bond** within 10 days after demand for [*such*  
 15 *bond, the employer fails to provide the same, the commissioner may commence court action against the*  
 16 *employer in the circuit court of appropriate jurisdiction*] **the bond, the commissioner may com-**  
 17 **mence an administrative action** to compel the employer to [*furnish such*] **provide the** bond or  
 18 cease doing business until the employer has done so. The employer shall have the burden of proving  
 19 the amount [*thereof*] **of the required bond** to be excessive.

20 (3) If the [*court*] **commissioner** finds that there is just cause for requiring [*such*] **the** bond and  
 21 that the [*same*] **bond** is reasonably necessary or appropriate to secure the prompt payment of the  
 22 wages of the employees of [*such*] **the** employer, the [*court*] **commissioner** shall **issue an order**  
 23 **subject to challenge or appeal under ORS chapter 183** to enjoin [*such*] **the** employer from doing  
 24 business in this state until the requirement is met, or shall make other, and may make further,  
 25 **appealable** orders appropriate to compel compliance with the requirement.

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

29 **SECTION 4.** ORS 652.340 is amended to read:

30 652.340. (1) If upon investigation by the Commissioner of the Bureau of Labor and Industries,  
 31 after taking assignments of any wage claims under ORS 652.330, it appears to the commissioner that  
 32 the employer is representing to employees that the employer is able to pay wages for their services  
 33 and that the employees are not being paid for their services, the commissioner may require the  
 34 employer to give a bond in [*such sum as*] **an amount that** the commissioner deems reasonable and  
 35 adequate in the circumstances, with sufficient surety, conditioned that the employer will for a [*def-*  
 36 *inite future period not exceeding six months*] **future period that the commissioner considers ap-**  
 37 **propriate** conduct business and pay employees in accordance with the laws of Oregon.

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

44 (3) If the [*court*] **commissioner** finds that there is just cause for requiring [*such*] **the** bond and  
 45 that the [*same*] **bond** is reasonably necessary or appropriate to secure the prompt payment of the

1 wages of the employees of *[such]* **the** employer and the employer's compliance with ORS 652.310 to  
 2 652.414, the *[court]* **commissioner shall issue an order subject to challenge or appeal under ORS**  
 3 **chapter 183 to** enjoin *[such]* **the** employer from doing business in this state until the requirement  
 4 is met, or shall make other, and may make further, **appealable** orders appropriate to compel com-  
 5 pliance with the requirement.

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

9 **SECTION 5.** ORS 652.409 is amended to read:

10 652.409. (1) The Wage Security Fund is established separate and distinct from the General Fund.  
 11 After deduction of the amounts provided in ORS 657.439 (2)(a), all moneys received by the Employ-  
 12 ment Department pursuant to ORS 657.439 (2)(a) shall be paid into the State Treasury and credited  
 13 to the Wage Security Fund. All income earned on moneys in the Wage Security Fund invested by  
 14 the State Treasurer shall accrue to the fund.

15 (2) All income earned on moneys in the Wage Security Fund, and all other moneys in the fund,  
 16 are appropriated continuously to the Commissioner of the Bureau of Labor and Industries to *[carry*  
 17 *out the provisions of ORS 652.414]* **administer and enforce the provisions of ORS chapters 652**  
 18 **and 653.**

19 **SECTION 6.** (1) **A contractor or subcontractor, or an agent of a contractor or subcon-**  
 20 **tractor, may not intentionally:**

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

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

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

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

30 **(e) Otherwise deprive an employee, permanently or indefinitely, of wages due to an em-**  
 31 **ployee under ORS 279C.840 in an amount that equals or exceeds the lessor of:**

32 **(A) \$1,000; or**

33 **(B) 25 percent of wages due to the employee under 279C.840.**

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

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

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

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

40 **SECTION 7.** Section 6 of this 2016 Act is added to and made a part of ORS 279C.800 to  
 41 279C.870.

42 **SECTION 8.** (1) Sections 6 and 7 of this 2016 Act and the amendments to ORS 652.125,  
 43 652.340, 652.409, 652.610 and 652.750 by sections 1 to 5 of this 2016 Act become operative on  
 44 January 1, 2017.

45 **(2) The Commissioner of the Bureau of Labor and Industries may adopt rules and take**

1 any other action before the operative date specified in subsection (1) of this section that is  
2 necessary to enable the commissioner, on or after the operative date specified in subsection  
3 (1) of this section, to exercise all of the duties, functions and powers conferred on the com-  
4 missioner by section 6 of this 2016 Act and the amendments to ORS 652.125, 652.340, 652.409,  
5 652.610 and 652.750 by sections 1 to 5 of this 2016 Act.

6 SECTION 9. This 2016 Act being necessary for the immediate preservation of the public  
7 peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect  
8 on its passage.

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