

# DRAFT

## SUMMARY

Limits remedies and penalties for certain wage and hour violations. Prohibits employee who claims that employer failed to pay certain wages during employment from seeking additional remedy for failure to pay unpaid wages at time of employee's separation from employment for same or substantially similar alleged violation.

## A BILL FOR AN ACT

1  
2 Relating to the limitation of employer liability for certain workplace vio-  
3 lations; amending ORS 652.020, 652.120, 652.150, 652.615, 653.261 and  
4 653.055.

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

6 **SECTION 1.** ORS 652.020 is amended to read:

7 652.020. (1) No person shall be employed in any mill, factory or manufac-  
8 turing establishment in this state more than 10 hours in any one day, or in  
9 sawmills, planing mills, shingle mills and logging camps more than eight  
10 hours, exclusive of one hour, more or less, in one day or more than 48 hours  
11 in one calendar week, except logging train crews, guards, boiler operators  
12 and persons engaged in the transportation to and from work, and employees  
13 when engaged in making necessary repairs, or in the case of emergency  
14 where life and property are in imminent danger. However, employees may  
15 work overtime not to exceed three hours in one day, conditioned that pay-  
16 ment be made for said overtime at the rate of time and one-half the regular  
17 wage.

18 (2) No employer shall require or permit any person to work in any place  
19 mentioned in this section more than the hours provided for in this section

1 during any day of 24 hours. No employer shall permit or suffer an overseer,  
2 superintendent or other agent of the employer to violate this section.

3 (3) This section does not apply to persons employed in the care of quarters  
4 or livestock, conducting [*messhalls*] **mess halls**, superintendence and direc-  
5 tion of work, or to the loading and removal of the finished forest product.

6 (4) Subsections (1) and (2) of this section do not apply to employees who  
7 are represented by a labor organization for purposes of collective bargaining  
8 with their employer, provided limits on the required hours of work and  
9 overtime payment have been agreed to between the employer and labor or-  
10 ganization, or if no agreement is reached, then, for the purposes of this  
11 subsection, such limits and payments shall not be deemed to be changed from  
12 the previous collective bargaining agreement between the employer and labor  
13 organization unless the employees have been locked out, are engaged in a  
14 strike or the employer has unilaterally implemented new terms and condi-  
15 tions of employment.

16 (5) **A person may not bring a claim for a violation of this section**  
17 **simultaneously or consecutively with another claim for the same or a**  
18 **substantially similar alleged violation.**

19 (6) **An employee who claims the employer violated this section**  
20 **during the employee's employment with the employer does not have**  
21 **a claim under ORS 652.140 for the alleged violation of this section if**  
22 **the employer did not remedy the violation prior to the employee's**  
23 **separation from employment.**

24 **SECTION 2.** ORS 652.120 is amended to read:

25 652.120. (1) Every employer shall establish and maintain a regular payday,  
26 at which date the employer shall pay all employees the wages due and owing  
27 to them.

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

31 (3) This section does not prevent the employer from establishing and

1 maintaining paydays at more frequent intervals.

2 (4) This section does not prevent any employer from entering into a  
3 written agreement, prior to the rendering of any services, and mutually sat-  
4 isfactory with the employer's employees, as to the payment of wages at a  
5 future date.

6 (5) When an employer has notice that an employee has not been paid the  
7 full amount the employee is owed on a regular payday and there is no dis-  
8 pute between the employer and the employee regarding the amount of the  
9 unpaid wages:

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

13 (b) If the unpaid amount is five percent or more of the employee's gross  
14 wages due on the regular payday, the employer shall pay the employee the  
15 unpaid amount within three days after the employer has notice of the unpaid  
16 amount, excluding Saturdays, Sundays and holidays.

17 **(6) A remedy provided under this section may not be enforced si-**  
18 **multaneously or consecutively with another remedy for the same or**  
19 **a substantially similar alleged violation.**

20 **(7) An employee who claims the employer violated this section**  
21 **during the employee's employment with the employer does not have**  
22 **a claim under ORS 652.140 for the alleged violation of this section if**  
23 **the employer did not remedy the violation prior to the employee's**  
24 **separation from employment.**

25 **SECTION 3.** ORS 652.150 is amended to read:

26 652.150. (1) Except as provided in subsections (2) and (3) of this section,  
27 if an employer willfully fails to pay any wages or compensation of any em-  
28 ployee whose employment ceases, as provided in ORS 652.140 and 652.145,  
29 then, as a penalty for the nonpayment, the wages or compensation of the  
30 employee shall continue from the due date thereof at the same hourly rate  
31 for eight hours per day until paid or until action therefor is commenced.

1 However:

2 (a) In no case shall the penalty wages or compensation continue for more  
3 than 30 days from the due date; and

4 (b) A penalty may not be assessed under this section when an employer  
5 pays an employee the wages the employer estimates are due and payable  
6 under ORS 652.140 (2)(c) and the estimated amount of wages paid is less than  
7 the actual amount of earned and unpaid wages, as long as the employer pays  
8 the employee all wages earned and unpaid within five days after the em-  
9 ployee submits the time records.

10 (2)(a) If the employee or a person on behalf of the employee submits a  
11 written notice of nonpayment, the penalty may not exceed 100 percent of the  
12 employee's unpaid wages or compensation unless the employer fails to pay  
13 the full amount of the employee's unpaid wages or compensation within 12  
14 days after receiving the notice.

15 (b) If the employee or a person on behalf of the employee fails to submit  
16 a written notice of nonpayment, the penalty may not exceed 100 percent of  
17 the employee's unpaid wages or compensation.

18 (c) A written notice of nonpayment must include the estimated amount  
19 of wages or compensation alleged to be owed or an allegation of facts suffi-  
20 cient to estimate the amount owed. Submission of a written notice of non-  
21 payment that fails to include the estimated amount of wages or compensation  
22 alleged to be owed or an allegation of facts sufficient to estimate the amount  
23 owed does not satisfy the requirement for written notice under this sub-  
24 section unless the employer has violated ORS 652.610, 652.640 or 653.045.

25 (d) For purposes of determining when an employer has paid wages or  
26 compensation under this subsection, payment occurs on the date the em-  
27 ployer delivers the payment to the employee or sends the payment by first  
28 class mail, express mail or courier service.

29 (3)(a) For purposes of this section, a commission owed to an employee by  
30 a business that primarily sells motor vehicles or farm implements is not due  
31 until all of the terms and conditions of an agreement between the employer

1 and employee concerning the method of payment of commissions are fulfilled.  
2 If no such agreement exists, the commission is due with all other earned and  
3 unpaid wages or compensation as provided in ORS 652.140.

4 (b) Notwithstanding subsection (2) of this section, when there is a dispute  
5 between an employer and an employee concerning the amount of commission  
6 due under paragraph (a) of this subsection, if the amount of unpaid com-  
7 mission is found to be less than 20 percent of the amount of unpaid com-  
8 mission claimed by the employee, the penalty may not exceed the amount of  
9 the unpaid commission or \$200, whichever is greater.

10 (4) Subsections (2) and (3)(b) of this section do not apply when:

11 (a) The employer has violated ORS 652.140 or 652.145 one or more times  
12 in the year before the employee's employment ceased, **if the violation is**  
13 **reflected by entry of judgment or final order;** or

14 (b) The employer terminated one or more other employees on the same  
15 date that the employee's employment ceased, **if the decision to terminate**  
16 **the employee was part of a reduction in force.**

17 (5) The employer may avoid liability for the penalty described in this  
18 section by showing financial inability to pay the wages or compensation at  
19 the time the wages or compensation accrued.

20 **SECTION 4.** ORS 652.615 is amended to read:

21 652.615. (1) There is hereby created a private cause of action for a vio-  
22 lation of ORS 652.610 (3) for actual damages or \$200, whichever is greater.  
23 In any such action the court may award to the prevailing party, in addition  
24 to costs and disbursements, reasonable attorney fees.

25 (2) **A remedy provided under this section may not be enforced si-**  
26 **multaneously or consecutively with another remedy for the same or**  
27 **a substantially similar alleged violation.**

28 (3) **An employee who claims the employer violated this section**  
29 **during the employee's employment with the employer does not have**  
30 **a claim under ORS 652.140 for the alleged violation of this section if**  
31 **the employer did not remedy the violation prior to the employee's**

1 **separation from employment.**

2 **SECTION 5.** ORS 653.055 is amended to read:

3 653.055. (1) Any employer who pays an employee less than the wages to  
4 which the employee is entitled under ORS 653.010 to 653.261 is liable to the  
5 employee affected:

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

8 (b) *[For civil penalties provided in ORS 652.150]* **For an additional**  
9 **amount as liquidated damages equal to the amount referred to in**  
10 **paragraph (a) of this subsection.**

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

14 (3) **Except as provided in subsections (5) and (6) of this section,** the  
15 Commissioner of the Bureau of Labor and Industries has the same powers  
16 and duties in connection with a wage claim based on ORS 653.010 to 653.261  
17 as the commissioner has under ORS 652.310 to 652.445 and in addition the  
18 commissioner may, without the necessity of assignments of wage claims from  
19 employees, initiate suits against employers to enjoin future failures to pay  
20 required minimum wages or overtime pay and to require the payment of  
21 minimum wages and overtime pay due employees but not paid as of the time  
22 of the filing of suit. The commissioner may join in a single proceeding and  
23 in one cause of suit any number of wage claims against the same employer.  
24 If the commissioner does not prevail in such action, the commissioner shall  
25 pay all costs and disbursements from the Bureau of Labor and Industries  
26 Account.

27 (4) The court may award reasonable attorney fees to the prevailing party  
28 in any action brought by an employee under this section.

29 (5) **A remedy provided under this section may not be enforced si-**  
30 **multaneously or consecutively with another remedy for the same or**  
31 **a substantially similar alleged violation.**

1       **(6) An employee who claims the employer violated this section**  
2 **during the employee's employment with the employer does not have**  
3 **a claim under ORS 652.140 for the alleged violation of this section if**  
4 **the employer did not remedy the violation prior to the employee's**  
5 **separation from employment.**

6       **SECTION 6.** ORS 653.261 is amended to read:

7       653.261. (1) The Commissioner of the Bureau of Labor and Industries may  
8 adopt rules prescribing such minimum conditions of employment, excluding  
9 minimum wages, in any occupation as may be necessary for the preservation  
10 of the health of employees. The rules may include, but are not limited to,  
11 minimum meal periods and rest periods, and maximum hours of work, but  
12 not less than eight hours per day or 40 hours per week; however, after 40  
13 hours of work in one week overtime may be paid, but in no case at a rate  
14 higher than one and one-half times the regular rate of pay of the employees  
15 when computed without benefit of commissions, overrides, spiffs and similar  
16 benefits.

17       (2) Nothing contained in ORS 653.010 to 653.261 shall be construed to  
18 confer authority upon the commissioner to regulate the hours of employment  
19 of employees engaged in production, harvesting, packing, curing, canning,  
20 freezing or drying any variety of agricultural crops, livestock, poultry or  
21 fish.

22       (3) Rules adopted by the commissioner pursuant to subsection (1) of this  
23 section do not apply to individuals employed by this state or a political  
24 subdivision or quasi-municipal corporation thereof if other provisions of law  
25 or collective bargaining agreements prescribe rules pertaining to conditions  
26 of employment referred to in subsection (1) of this section, including meal  
27 periods, rest periods, maximum hours of work and overtime.

28       (4) Rules adopted by the commissioner pursuant to subsection (1) of this  
29 section regarding meal periods and rest periods do not apply to nurses who  
30 provide acute care in hospital settings if provisions of collective bargaining  
31 agreements entered into by the nurses prescribe rules concerning meal peri-

1 ods and rest periods.

2 (5)(a) The commissioner shall adopt rules regarding meal periods for em-  
3 ployees who serve food or beverages, receive tips and report the tips to the  
4 employer.

5 (b) In rules adopted by the commissioner under paragraph (a) of this  
6 subsection, the commissioner shall permit an employee to waive a meal pe-  
7 riod. However, an employer may not coerce an employee into waiving a meal  
8 period.

9 (c) Notwithstanding ORS 653.256 (1), **except as provided in paragraphs**  
10 **(e) and (f) of this subsection**, [*in addition to any other penalty provided by*  
11 *law,*] the commissioner may assess a civil penalty not to exceed \$2,000  
12 against an employer that the commissioner finds has coerced an employee  
13 into waiving a meal period in violation of this subsection. Each violation is  
14 a separate and distinct offense. In the case of a continuing violation, each  
15 day's continuance is a separate and distinct violation.

16 (d) Civil penalties authorized by this subsection shall be imposed in the  
17 manner provided in ORS 183.745. All sums collected as penalties under this  
18 subsection shall be applied and paid over as provided in ORS 653.256 (4).

19 **(e) A civil penalty authorized by this subsection may not be imposed**  
20 **against an employer simultaneously or consecutively with any civil**  
21 **remedy available to the employee for the same or a substantially**  
22 **similar violation.**

23 **(f) An employee who claims the employer violated this subsection**  
24 **during the employee's employment with the employer does not have**  
25 **a claim under ORS 652.140 for the alleged violation of this subsection**  
26 **if the employer did not remedy the violation prior to the employee's**  
27 **separation from employment.**

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