



March 17, 2017

To: Joint Committee on Ways and Means, Subcommittee on Transportation and Economic Development

From: Brad Avakian, Commissioner

Re: Follow-Up Information to House Bill 5016

Thank you for the opportunity to provide testimony on March 13 and 14 regarding House Bill 5016; the Bureau of Labor and Industries' budget bill. We are pleased to provide the following additional information in response to questions that were asked by committee members during our presentation.

How many Prevailing Wage Rate "predeterminations" have been issued by the agency, and how many have been "overturned?"

Prior to the commencement of a construction project, agencies, contractors and other interested parties may request BOLI to make a determination regarding whether the project is covered under the definitions of "public works" in ORS 279C and therefore subject to the PWR laws, including the requirement to pay workers prevailing wage rates. Since 2005, BOLI has issued approximately 520 coverage determinations. The number of requests BOLI receives varies from year to year. Of the coverage determinations issued, 146 found the project to be covered (i.e., subject to prevailing wage rate), 319 found the project not to be covered, and 49 were closed without a determination being made due to insufficient information, withdrawal by the requester, etc. Of the determinations issued, only four have been challenged and resulted in an administrative hearing. BOLI prevailed in each of those. A small number of requests are still open and under review. The attached spreadsheet provides greater detail.

Please provide a written response regarding SB 779 and whether the proposed amendments to the current law achieve the intent of exempting family members under the sick time law.

The legislature could simply opt to define and exempt family farms of a certain size or certain makeup of owners. Alternatively, SB 779 is an option. It should be noted that the original

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SALEM

3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

EUGENE

1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND

Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-4990
(541) 322-2435
FAX (541) 389-8265

Oregon Relay TTY:711

MEDFORD

Apprenticeship and Training
119 N Oakdale Ave.
Medford, OR 97501-2629
(541) 776-6201
FAX (541) 776-6284



exemption written into SB 454 (2015) exempted from the definition of "employee" an "individual employed by that individual's parent, spouse or child." The language in SB 779 does not amend the definition of "employee," but rather, creates a new provision stating that certain owners and their family members are excluded from being counted as employees only for the purpose of calculating the number of employees employed. The legislature should note that the result of SB 779 could be that family members are excluded from the total employee count, but the number of other employees employed could still be sufficient to trigger the total employee threshold number requiring sick time to be provided to employees. Furthermore, as currently written, employees excluded as family members from being counted for determining the number of employees employed could still be covered under the existing definition of "employee" and be entitled to either paid or unpaid sick time under the law, depending on the number of employees employed by the employer.

As to the specific language in SB 779, some of the terms in the bill are undefined and somewhat vague, e.g., "director" and "substantial." The related definitions in the business organization statutes do not provide much in the way of guidance. For instance, "director" is defined in ORS 60.387 as an "individual who is or was a director of a corporation or an individual who, while director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise." This language provides little guidance to establish any limits on who could be identified as a "director" of a corporation for the purposes of excluding them from being included in the employee count for sick time. For example, if a corporation can simply designate an employee to serve as a "director," what is there to prevent all employees from being identified as directors by their employer? The same concerns exist for the references to LLCs and LLPs. The term "substantial" in SB 779 is also imprecise. Most dictionaries simply define "substantial" as something that is of considerable importance or size. Clarifying what is intended by these terms would be helpful.

BOLI will continue to assist advocates and the legislature to craft language that achieves the stated goal.

Please provide examples of publications that are available free of charge online and those that are sold, and what revenues are anticipated for publications and the production of Civil Rights Division case files for which a fee is charged.

Attached is a list of publications made available free of charge online by the agency's Technical Assistance for Employers Program (TA); as well as composite posters and employer handbooks for which a fee is charged. (Individual posters required by law are available and may be downloaded free of charge.) The agency projects that in the 2017-2019 biennium, TA will generate \$864,000 in revenue from seminars conducted; \$209,000 in sales of composite posters of required state and federal postings; and \$171,000 in handbook sales.

The Wage and Hour Division also publishes a [Prevailing Wage Rate Law Handbook](#) and a [Farm/Forest Labor Contractor Handbook](#); both of which are downloadable from the agency's website and hard copies of which are available free of charge.

It is anticipated that the Civil Rights Division will generate \$130,000 during the biennium in fees charged for reproducing its investigative case files, which are most frequently requested in preparation for litigation by legal counsel for complainants and respondents. As noted during our budget hearing, these fees are used to fund an Office Specialist 2 position in the division for the heavy workload of filling requests for copies of the division's case files, which is often very time-consuming because of the size of the files.

Please provide information regarding the intake processes of the agency's divisions showing how complaints are processed.

Attached are copies of the Civil Rights Division's questionnaires for discrimination complaints pertaining to housing, employment, public accommodations, and vocational/career schools. CRD's online questionnaires are available in English and Spanish on the agency's website. Also attached is CRD's tort claim notice (for individuals who wish to file against a public employer). In addition, attached is information regarding CRD's complaint process from the agency's website.

Copies of the Wage and Hour Division's intake procedures are also attached.

Has there been any increase in the number of complaints from individuals based on their country of origin?

We assume this request for data is in connection with the recent immigration-related executive orders issued by the president; therefore, the time period for comparative year-to-date data is relatively limited, and it is too soon to reliably identify the impact of these orders. (See chart below.)

Comparison of Race/National Origin Complaints Received

	March to March		
	2014-2015	2015-2016	2016-2017
Race	316	362	311
National Origin	105	108	123

What constitutes the "reversals" in the agency's liquidated and delinquent accounts report and are they debts currently owed to the agency?

We were told in advance of the hearing that it was likely that Co-Chair Gomberg would be interested in information pertaining to uncollected debts owed to the agency, so we produced a special report prior to the hearing reporting the total amounts owed to the agency in current outstanding judgments. A copy of that report is attached.

The amounts reflected in the LFO Report on Liquidated and Delinquent Accounts Receivable which Co-Chair asked about at the hearing only reflect judgments that have been referred to the Department of Revenue and private collection agency for collection, and the disposition of these referrals. The term "reversal" in the LFO report is intended to capture erroneous data reported in previous reports in order to reflect the actual status of debt owed, however, the report in question that was previously prepared and submitted by the agency mistakenly listed as "reversals" accounts that were returned to the agency as uncollectible by the Department of Revenue or the private collection agency. These should not have been reported as such, and we regret the error. The incorrectly identified "reversal" amounts are still active accounts/judgments that are owed to both the agency and wage claimants for whom the agency has obtained judgments. In addition, the report should reflect the current status of all unpaid judgments; not only those that have been referred to the Department of Revenue or private collection agency. We will be working to reconcile the annual liquidated and delinquent accounts report to include all unpaid judgments as liquidated and delinquent accounts in the future.

How much has been expended in AG costs in the "Sweet Cakes" case?

The total amount of DOJ billed costs to date in connection with the "Sweet Cakes" case is \$43,689.50.

I hope these responses satisfactorily answer the questions asked. Please feel free to contact us should you have any additional questions.

Attachments:

- Prevailing Wage Rate Statistics
- Publications and Resources Available Online
- Civil Rights and Wage and Hour Division Intake Processes
- BOLI Uncollected Judgments Report

Prevailing Wage Rate Statistics

FISCAL YEAR (07/01 - 06/30)	FY 06/07	FY 07/08	FY 08/09	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16
# OF CONTRACTS AWARDED	1751	2121	2728	2744	2799	2858	2786	2856	2679	2675
\$ AMOUNT OF FEES COLLECTED	\$ 1,164,601.90	\$ 1,595,141.48	\$ 1,841,771.87	\$ 1,843,060.09	\$ 1,721,149.27	\$ 1,671,520.53	\$ 1,671,469.41	\$ 1,738,651.64	\$ 1,669,717.21	\$ 1,739,775.94
# OF DETERMINATIONS ISSUED	102	44	35	30	19	38	35	40	46	39

Minimum fee amount increased in 2007 from \$100 to \$250

Maximum fee amount increased in 2007 from \$5,000 to \$7,500

The number of contracts awarded reflects the number of public works contracts awarded, not projects. Potentially, multiple contracts may be awarded on a single project. BOLI collects a fee for each contract awarded.

These statistics are fluid (primarily over the last 2-3 fiscal years) in that agencies continue to notify us of contracts they awarded for previous years, and make fee payments on them as required.

Publications and Resources Available Online

Oregon Revised Statutes

Oregon Administrative Rules

FAQs and Fact Sheets

http://www.oregon.gov/BOLI/TA/pages/t_faq_tafaq.aspx

Agriculture - Minimum Wage and Overtime
Agriculture - Minimum Wage and Overtime - Spanish
Agriculture - Meal and Rest Periods
Agriculture - Minors in Agriculture
Benefits
Breaks: Rest and Meal Period Requirements
Breaks: Expression of Breast Milk
Business Closure - Final Wages
Child Labor Laws and School-to-Work
Commissions
Comp Time for State & Local Government Employees
Credit History
Crime Victims' Leave
Deductions
Direct Deposit
Disabilities and Employment Rights
Domestic Workers
Drug Testing
Employment at Will
Employment at Will - Spanish
Equal-Pay-Best-Practices.aspx
Exempt Employees - Classification Criteria
Fair Housing
Final Paychecks
Garnishments
Holiday Pay
Holiday Pay - Spanish
Hours Worked - What the Law Considers 'Paid Time'
Inclement Weather - *New
Independent Contractors
Injured Workers
In-Home Caregivers/Domestic Service Companions

Interns and Trainees
Itemized Pay Statements - *New
Jury Duty
Leave for Spouses of Military Members
Leave Laws
Managers of Apartments
Manufacturing Establishments
Meal Periods and Rest Breaks
Meeting and Training Time
Minimum Wage
Minors in the Workplace
Military Family Leave Act
Military Leave
Non-Compete Agreements
On-call Time
Oregon Family Leave Act (OFLA)
Oregon Sick Time
Overpayments
Overtime
Overtime - Spanish
Paydays and Paychecks
Paydays and Paychecks - Spanish
Personnel Files - *New
Pre-Employment Questions
Preparatory and Concluding Activities
Protected Classes
References
Religious Accommodation
Required Posters
Residential Care Facilities
Rest Breaks and Meal Periods
Restaurants - State/Federal Laws
Salaried Exempt Employees
Service Member Protections
Spouses of Service Member Leave
Sexual Harassment
Sexual Harassment - Spanish
Show-up Pay or Adequate Work
Travel
Underpayment

Vacation Pay
Vacation Pay - Spanish
Veterans' Preference
Victims of Domestic Violence, Sexual Assault or Stalking -Workplace Protections
Volunteers
Wage Claim Process
Waiting Time
Whistle Blowing
Working Time - Spanish
Workplace Protections for Victims of Domestic Violence, Sexual Assault or Stalking

Oregon Sick Time Information

<http://www.oregon.gov/boli/TA/pages/index.aspx>

- 2015 Statute ORS 653.601 to ORS 653.661.pdf
- 2015 Sick Time Rules.pdf
- Sick Time Notification (English)
- Sick Time Notification (Spanish)
- Template for Quarterly Notification of Sick Time Accrual
- Notice to Employee Regarding Hardship Exception Under Sick Time Law.pdf
- Oregon Sick Time Frequently Asked Questions

Commonly Required Posters

http://www.oregon.gov/BOLI/ta/pages/Req_Post.aspx

Information and links to the commonly required posters for Oregon employers under federal and Oregon law. Posters may be downloaded and printed.

Oregon Minimum Wage Rate Summary

<http://www.oregon.gov/boli/WHD/OMW/Pages/Minimum-Wage-Rate-Summary.aspx>

Composite Posters and Employer Handbooks for Sale

http://www.oregon.gov/boli/TA/Pages/T_Tabooks.aspx

- **“7-in-1” English/Spanish composite poster for employers with less than 25 employees**
- **“9-in-1” English/Spanish composite poster for employers with 25 or more employees**
- **“13-in-1” English/Spanish laminated poster for Agriculture Employers**

Employer Handbooks

- **Child Labor Laws**
- **Documentation, Discipline and Discharge**
- **Employee Classification & Wage and Hour Exemptions**
- **Employment Leave Laws**
- **Harassment, Discrimination and Workplace Accommodation: A Civil Rights Handbook for Oregon Employers**
- **Legal Hiring Practices**
- **Policywriting Guidelines**
- **Wage and Hour Laws**

Civil Rights Division

Department

BOLI'S CIVIL RIGHTS COMPLAINT PROCESS

About Us

How to File a Complaint

Contact Us

Fact Sheets

There are several steps involved in filing a civil rights complaint with the Bureau of Labor and Industries. The steps vary, depending on the findings of the Intake officer and the investigator. The entire process generally takes seven months, but may take up to one year. The process includes the following components:

Enforcement of Laws

Complaint Process

Complaint Questionnaire

[Intake: Filling out the Questionnaire](#) (Click [HERE](#) for the Questionnaire)

Response Process

[Intake: Reviewing the Complaint](#)

Posters

[Investigation](#)

Administrative Rules

[Participating in a Fact-Finding Conference](#)

Oregon Revised Statutes

[Conciliation](#)

[Administrative Hearing](#)

[Complainant Responsibilities](#)

[Civil Rights Division Limitations](#)

Related Links

Intake - Filling out the Questionnaire

Filing a complaint usually begins by filling out a complaint Questionnaire and returning it to the Portland office. The Questionnaire is [available online](#) or by calling 971-673-0764. If you are unsure if you have a basis for filing a civil rights complaint or just have a question for the Civil Rights Division, please review the information in our Fact Sheets, contact one of our [local bureau offices](#) or email us at crdemail@boli.state.or.us.

Filling out the appropriate questionnaire is important. There are four types. If you believe you have experienced unlawful discrimination or retaliation in:

Employment: The place where you are currently employed, a previous employer or a job placement agency.

Housing: Rental, sale or lease of any real property for living purposes.

Public Accommodation: A place providing goods or services, like a store or restaurant. A place of public accommodation is defined in state law as any place that offers the public accommodations, advantages, facilities or privileges, whether in the nature of goods, services, lodging, amusements or otherwise.

Vocational/Career Schools: Private vocational, professional or trade schools. These places provide specialized training focused on a particular career or area of employment and are licensed to operate in Oregon.

After the Bureau receives your questionnaire, it will be assigned to an intake officer who determines if there is sufficient evidence to draft your formal complaint document (Perfected Charge). The intake officer may need more information--in these cases, you will be contacted by phone or in writing. You must respond promptly to such requests or your complaint will not be processed further. If your complaint does not fall within the Bureau's jurisdiction or there is not enough evidence to warrant an investigation, the intake officer will notify you in writing.

Return

Reviewing the Complaint

The intake officer will draft a formal complaint document based on your questionnaire

which will be mailed to you for your review. After you have verified that the information is correct, you must sign the document and return it promptly to any bureau office. If you feel changes are necessary, please contact the Portland office.

Return your signed complaint to the division. The day the division receives your signed complaint is the official filing date.

Since you initiated the complaint, you are referred to as the complainant. The person or organization you made the complaint against is referred to as the respondent.

If the basis for filing an employment-related complaint is covered by both state and federal law, a complaint filed with BOLI (state) is automatically filed with the federal Equal Employment Opportunity Commission (EEOC). This is called a dual filing.

Return

Investigation

Initial Filing

After your complaint is filed, notices of the filing and a copy of the complaint are sent to you and the respondent. The complaint is a public record once it is filed.

Case Assessment

Cases are assessed at multiple points in the processing of a complaint. Not all complaints will be assigned for extended investigation. If the Civil Rights Division determines that it is unlikely further investigation could yield substantial evidence supporting the allegations, the case will be closed and you will be provided information regarding your right to file a civil action in court.

Burden of Proof

The burden of proof rests with a complainant; to prove discrimination occurred, you must provide substantial evidence. The investigation may be closed at any point that it appears unlikely further investigation could yield substantial evidence of the alleged violations.

Complainant interview and cooperation

If the Civil Rights Division forwards your case for further investigation, an investigator may contact you to schedule an appointment for an investigative interview. If you cannot be available at your scheduled time, you must contact the Division immediately to reschedule your interview. If you do not complete the interview or cooperate in rescheduling it, your complaint will be dismissed.

The interview covers each discriminatory act stated in your complaint and its date of occurrence. You must be able to tell the Division how each discriminatory act is linked to your protected class(es).

The investigator may ask you to provide the following information:

- Identify witnesses able to corroborate relevant facts;
- Identify comparators (other employees or individuals who, in a situation similar to yours, were treated the same as you or differently by the respondent);
- Provide copies of any relevant documents in your possession or available to you (the investigator may ask you to make reasonable efforts to obtain certain information, such as medical records or unemployment hearing transcripts);
- Describe the details of any relevant documents not available to you.

The Division will not attempt to obtain documentation or interview a witness if there is not a clear basis for believing the document or witness may have information relevant to alleged violation(s).

BOLI investigators are neutral fact finders, and cannot offer legal advice or recommend specific attorneys. Complainants have the right to seek attorney representation at any time in the investigation process, but there is no requirement to have an attorney. If you believe you need legal advice, the Oregon State Bar has a lawyer referral service available at <http://www.osbar.org/public/ris/>.

Completion of Investigation

Investigative findings and recommendations are reviewed by Division management. If the Division finds substantial evidence of a violation, a formal notice of Substantial Evidence Determination is issued. If no violation is found, the Division dismisses the case and notifies you and the respondent of the dismissal. When the case is closed, the complainant is provided information regarding the potential right to file a civil action in court.

Complainant option to withdraw complaint

You can withdraw your complaint at any time during the investigative process. If you

want to withdraw your complaint, you must send your request in writing. The division closes its investigation of your complaint following your withdrawal, and provides information regarding the potential right to file a civil action in court.

Return

Participating in a Fact-Finding Conference

During an investigation the investigator may require you to attend a fact-finding conference. The purpose of a fact-finding conference is to identify points of agreement and disagreement and, if possible, resolve any disputes and settle the complaint.

If the fact-finding conference results in both parties agreeing to settle the complaint, the investigator drafts a conciliation agreement and closes the case.

If the fact-finding conference does not result in a settlement, the investigation continues if more information is required. However, the investigator may be able to complete the case with the information supplied at the fact-finding conference.

Return

Conciliation

It may be possible to resolve your complaint through a conciliation, either during the investigation or after the issuance of a Substantial Evidence Determination. A conciliation is a voluntary, no-fault settlement of a complaint.

If you and the respondent are able to come to an agreement on a settlement, the division may draft a conciliation agreement for signature. This resolves the complaint. When the conciliation agreement is signed, the complaint is closed.

If the investigator makes a Substantial Evidence Determination, the division will attempt to conciliate the case and will contact both the complainant and the respondent.

If conciliation fails after a Substantial Evidence Determination, the division's management reviews the case to decide if BOLI will forward it to an administrative presenter in BOLI's Administrative Prosecution Unit for further action. If the case is referred to the APU, a case presenter reviews the file and decides if the evidence meets the higher standard required for an administrative hearing. Not all Substantial Evidence Determinations meet this standard.

If the case presenter decides that the case should receive an administrative hearing, BOLI represents you at the hearing without charge.

If either CRD management or the case presenter decides against an administrative hearing, the case is closed and you are issued a notice of your right to file a civil suit.

On the one year anniversary of the filing of most employment complaints, the complainant must be issued the 90 day notice of the right to file a civil suit, even if BOLI is referring the case to the APU or has not yet made this decision.

Return

Administrative Hearing

An administrative hearing is similar to a court hearing and is held before an Administrative Law Judge (ALJ). After the hearing, the ALJ issues a proposed Order to the Commissioner of the Bureau of Labor and Industries. The Commissioner may adopt, reject or modify the Proposed Order. The Commissioner's Final Order has the same weight as a judge's decision and may specify specific remedies.

In cases of discrimination in employment, potential remedies include employment or reemployment, back pay or other benefits lost due to the discriminatory practice, out-of-pocket expenses having to do with the discriminatory practice and compensation for emotional distress.

In cases of discrimination in housing or in places of public accommodation, remedies may include the rental, lease, or sale of real property, the provision of services, out-of-pocket expenses or benefits lost because of the discriminatory practice and compensation for emotional distress.

If, during the processing of a complaint, the division finds that the respondent made a settlement offer that provides an effective remedy to the unlawful practice, the division will tell you about the offer. If you do not accept it, the division may close the complaint.

In cases where a complaint has been dual-filed with the EEOC, the EEOC determines

whether the offer constitutes a full settlement of the federal charge.

Return

Complainant Responsibilities

As a complainant, you have several responsibilities:

- You must file your complaint within one year of the date the discrimination occurred.
- If your complaint is about retaliation involving unsafe work practices, in most cases you must file your complaint within 90 days of the occurrence of the retaliation.
- You should keep careful records of the dates, names, addresses and phone numbers of any witnesses to the discriminatory act(s).
- You must tell the Division if you change your address or telephone number. If the investigator cannot locate you, your case may be dismissed.
- You have an obligation to mitigate your damages and keep records of your mitigation.
- Your cooperation is important! You must give the intake officer or the investigator the information requested so your complaint can be processed and investigated. If you cannot do this, the division may not accept your complaint, or may dismiss a complaint that has been filed. If you fail to cooperate during the process, the division could close your case.
- You have the burden of proving your case by substantial evidence.

Return

Civil Rights Division Limitations

The Civil Rights Division cannot process your complaint if there is not enough evidence to show that you were discriminated against on the basis of protected class status.

An investigator cannot give you legal advice or act as a lawyer for you or for the respondent. The investigator's role is to investigate the facts of your case in an unbiased manner and, when feasible, to help resolve the complaint.

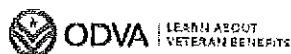
In most cases you have only one year from a date of harm in which to file a complaint.

Return

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- State Directories
- Agencies A to Z
- Oregon Administrative Rules
- Oregon Revised Statutes
- Oregon - an Equal Opportunity Employer
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WEB SITE LINKS

- Text Only Site
- Accessibility
- Oregon.gov
- Browser Support
- Privacy Policy
- Web Site Feedback

PDF FILE ACCESSII

Adobe Reader, or equivalent view PDF files. Click the image to get a free download from Adobe.



General Information for BOLI's Housing Discrimination Questionnaire

- A. **What BOLI investigates:** Oregon law prohibits discrimination in housing based upon race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability. The Oregon Bureau of Labor and Industries (BOLI), Civil Rights Division (CRD), can investigate allegations of such discrimination to determine if there is substantial evidence supporting the allegations. Many kinds of unfair treatment and discrimination *do not* violate the law, and thus the Division may decide not to investigate your allegations. Please visit our website at <http://www.oregon.gov/BOLI> for more details.
- B. **Burden of proof:** You have the burden of proving your claims. BOLI investigators must be impartial and are *not* advocates for complainants.
- C. **The questionnaire is NOT an official complaint:** The questionnaire is the form used by the Intake staff to assist in the drafting of an official complaint. Please fill out the questionnaire as completely as possible. Completing the questionnaire is only a preliminary step.
- D. **Public Record:** If you file an official complaint, a copy of that complaint is sent to the person(s) you are complaining about, with instructions that they provide an answer to your allegations. The investigative file (*including the questionnaire*) eventually becomes a public record that may be viewed or copied by anyone requesting to do so (for a fee), except for contents that are exempt under Oregon's Public Records Law (ORS Chapter 192).
- E. **Time limitations:** To file an unlawful housing discrimination complaint with BOLI you must provide BOLI with a *signed* copy your complaint within one (1) year from the date on which the alleged discriminatory act occurred. (You may file a civil action in circuit court not later than two years after the occurrence or the termination of the unlawful practice.)
- F. **No Jurisdiction:** BOLI does not have jurisdiction over Residential Landlord and Tenant laws (ORS Chapter 90) or issues such as habitability. If your complaint involves such issues separate from any unlawful discrimination, please contact an attorney or tenant's advocacy organization.

G. Other Resources

Fair Housing Council of Oregon
506 SW 6th Ave #1111
Portland, OR 97204
503-223-8197
<http://www.fhco.org>

Community Alliance of Tenants
2710 NE 14th Ave
Portland, OR 97212
503-288-0130
<http://oregoncat.org>

Legal Aid Services of Oregon
1-888-610-8764
<http://www.oregonlawhelp.org>

Oregon State Bar - Lawyer Referral Service
1-800-452-7636
<http://www.osbar.org>

INTAKE COMPLAINT QUESTIONNAIRE (HOUSING)

Please read this entire questionnaire before attempting to fill it out. Answer all questions. If you do not know the answer to a question or a question does not relate to your situation, please state so. Please sign this form after filling it out and mail it to:

HOLI
800 NE Oregon St, Ste 1045
Portland, OR 97232

If you have any questions regarding this form, please call the Civil Rights Division at (971) 673-0764.

1. Full name(s), include spouse if applicable (Last, First):

2. Your address and phone number:

Street: _____

City: _____ State: _____ Zip Code: _____

Phone: Home: _____

Work: _____

Message: _____

I prefer to be contacted at: Work Home

The best time to contact me is: _____

3. Names of children under the age of 18:

Not applicable

Name: _____

Age: _____

Name: _____

Age: _____

Name: _____

Age: _____

Name: _____

Age: _____

4. Contact person (someone other than yourself who can contact you at all times):

Name: _____ Phone #: _____

Relationship to you: _____

This section for office use only:

File # _____

Q Sent: _____ By: _____ PC: _____

Impact Entry Done By:

INT: _____ Date: _____

Intake Assigned To:

INT: _____ Date: _____

Charge Drafted By:

INT: _____ Date: _____

Contract	Juris	Basis
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_____	HO	_____
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_____	HO	_____
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_____	HO	_____
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Branch _____ County _____

First Contact: _____

First DOD: _____

Most Recent DOD: _____

Q Rec Date

Last Date of Harm

6. **Property involved:**
Address of property involved: _____
Name of property (if applicable): _____
Street: _____
City: _____ State: _____ Zip Code: _____

Description of property:

- Single-Family house (including condominiums and co-ops)
- Residential Building containing 2 to 4 apartments
- Residential Building containing 5 or more apartments
- Mobile Home / Mobile Home Park
- Other (specify) _____

Is the property involved designated low-income housing?

- Yes No

7. **Issue - How were you harmed:**

- Denied the rental or sale of a dwelling
- Discriminated against (treated differently) in the terms and conditions of occupancy
- Eviction
- Failure to accommodate disability
- Discriminated against when seeking loan for real property transaction
- Mobile Home Park refuses to sell or rent to families with children
- Other (Specify) _____

8. **Basis - I have been discriminated against (treated differently) because of:**

Race/Color: -Black -Asian/Pacific Islander
 -White -Other (specify)
 -Native American

National Origin: -Hispanic -Other (specify)

Religion (specify): _____

Sex (Gender): -Female -Male -Other (specify)

Familial Status (children): Under 18 years old
 Pregnant

Disability: -Physical -Mental

Source of Income: (includes Section 8)

12. What do you think the Respondents (landlord, lender, owner, etc.) will tell us in response to your allegations?

13. Names of witnesses who can testify specifically as to what happened:
I have no witnesses

Name: _____

Street: _____

City: _____ State: _____ Zip Code: _____

Phone: _____

What did this person witness? _____

Name: _____

Street: _____

City: _____ State: _____ Zip Code: _____

Phone: _____

What did this person witness? _____

****SEND US COPIES OF YOUR RENTAL AGREEMENT, RULES & REGULATIONS, WRITTEN NOTICES AND ANY OTHER DOCUMENTS RELEVANT TO THE COMPLAINT****

Signature

Date

How were you referred to our office?

- Community/Non-profit organization
- Fair Housing Organization
- Telephone book
- Friend/Word-of-mouth
- Advertisement
- Television/Radio
- Newspaper
- HUD website
- BOLI website
- Internet search
- Fair Housing poster; please specify location: _____
- HUD Fair Housing Event, please specify: _____
- Other, please specify: _____



General Information and Instructions Civil Rights Division Questionnaire and Complaint

- A. What We Investigate** – We investigate allegations of employment discrimination or retaliation and any supporting substantial evidence you submit. Many kinds of unfair treatment and discrimination *do not* violate the laws, and thus Oregon Bureau of Labor and Industries Civil Rights Division (CRD) cannot investigate. Please visit our website at www.oregon.gov/boli before you fill out the Questionnaire. You have the burden of proving your claims.
- B. Employment at Will** – Oregon is an “employment at will” state, which means that employers are free to hire and fire for *any* reason that does not violate the law. *Not all unfair or discriminatory treatment is unlawful.*
- C. Time Limits** – You must file a Complaint within one year of the date of any discriminatory action/harm. CRD can only investigate unlawful discrimination that has occurred within **one year from the date of the unlawful act**. Please submit your questionnaire promptly to allow time for the intake interview, drafting of the charge, sending/receiving time, signing and notarization and returning to BOLI before the 1 year anniversary and to be received before the end of the business day.
- For OSHA retaliation claims, you must file within **90 days** of the unlawful act and the charge requires only your signature.
- D. What is the Questionnaire** – The Questionnaire is a form which assists the intake staff in drafting a *possible* charge. The **Questionnaire is NOT** an official complaint and completing the Questionnaire does not mean an investigation will be conducted. If you file a formal complaint, the Questionnaire will become part of a public record once a case is closed.
- E. Filling out the Questionnaire** – You must **completely fill out pages 1–4** of the Questionnaire, and any additional pages that apply. Please do not attach additional sheets instead of completing the Questionnaire. Additional documents are not required at this stage. Only attach additional sheets if they support your allegations. *Do not send originals.* Keep a copy of your Questionnaire for your records. (We do not provide copies).
- F. Procedure** – Due to the large number of questionnaires received, it may take several weeks for you to hear back from CRD. You will be contacted as soon as your questionnaire is assigned to an Intake Officer.
- G. Contact Information** – It is your responsibility to contact this office in writing advising us of changes in your address or phone number.
- H. Retaliation** – Retaliation is often *not* unlawful. For CRD to have jurisdiction over a retaliation claim, you must show that the retaliation occurred because of your involvement in a protected activity. There are many instances of retaliation over which CRD does not have jurisdiction.
- I. Private Attorney** – You may consult an attorney at any time before or during a CRD investigation. Your attorney may also draft and submit your complaint, but it must contain your notarized signature. You are not required to retain an attorney.

4. List the name(s) and contact information of anyone who has first-hand knowledge of the harm(s) you are alleging. List your best witness(es).

Witness Name: _____ Contact phone: _____

What did this person witness? _____

Witness Name: _____ Contact phone: _____

What did this person witness? _____

Witness Name: _____ Contact phone: _____

What did this person witness? _____

5. Was anyone else treated like you under the same conditions (e.g., disciplined by the same manager)? If so, give the person(s) name(s) and explain why you think they were treated that way.

6. Was anyone else treated differently than you under the same conditions (e.g., not disciplined by the same manager for doing the same thing you were disciplined for)? If so, give the person(s) name(s) and explain why they were treated differently.

FOR INJURED WORKER COMPLAINTS ONLY
(Employer must have 6 or more employees)

It is against the law to discriminate against or retaliate against an employee because the employee has been injured at work, reported a work related injury or filed a Workers' Compensation claim. In certain circumstances, employees may have rights to light duty work, and/or the right to return to their former job when fully released to do so. If you feel you were discriminated against because of a workplace injury, fill out this section.

If you are reporting more than one incident or date, copy and fill out a separate page for each.

Date of injury _____

Were you injured while performing your job? Yes No

Did you apply for Workers' Compensation? Yes No If yes, when? _____

The claim is currently: Accepted Denied Pending On Appeal Closed/Settled

If you did not file a Workers' Compensation claim, explain why not: _____

What is/was the diagnosis: _____

Were you taken off work? Yes No If yes, when were you off work? From: _____ To: _____

Do you have permanent restrictions due to your workplace injury? Yes No

If yes, what are they? _____

LIGHT DUTY RELEASE:

Were you released to work with restrictions? Yes No If yes, when? _____

What were your restrictions? _____

Did your employer have a vacant position that was suitable, based on your skills and restrictions? Yes No

Note: An employer is not required to create a job or modify your existing job because of a workplace injury.

If yes, what was the position? _____

Did you ask your employer for an available, suitable position? Yes No Date _____

Did your employer offer you a light duty position? Yes No Did you accept the position? Yes No

If no, did your employer place you on OFLA leave? Yes No

FULL DUTY RELEASE:

Date you were released to full duty *without* restrictions: _____

Did you ask for your job back? Yes No If yes, on what date? _____

Were you returned to the job you held at the time of injury? Yes No If yes, on what date? _____

If no, did your previous job still exist? Yes No

If yes, what reason did your employer give for not returning you to that job? _____

FOR DISABILITY DISCRIMINATION COMPLAINTS ONLY

(Employer must have 6 or more employees)

It is against the law to discriminate against employees because they have a protected disability. Also, in certain circumstances, employees with a protected disability may be entitled to reasonable workplace accommodation. If you feel your employer has violated a law related to this protected class, fill out this section.

AN INDIVIDUAL WITH A PROTECTED DISABILITY is a person who: (1) has a long-duration physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; (3) is regarded as having such an impairment; or (4) has a progressive illness as defined by OAR 839-006-1240.

(Please note: If you have been found disabled in a Workers' Compensation or Social Security claim, or as a disabled veteran, you are not necessarily covered by the laws prohibiting discrimination against disabled persons.)

What is/are your disability or disabilities? _____

Did you inform your employer of your medical condition? Yes No If yes, date _____

If yes, when did you inform them (e.g., time of hire, interview, date of diagnosis)? _____

If yes, who did tell about your disability or disabilities? _____

Did you give your employer medical documentation? Yes No If yes, when: _____

What major life activity/ies (e.g., walking, lifting, seeing, breathing, hearing) is/are substantially limited by your disability or disabilities? _____

How does this limit you, in comparison with an average non-impaired person in the general population? _____

Could you perform *all* the essential functions of your job without accommodation? Yes No

If no, could you perform all the essential functions of your job with accommodation? Yes No

Did you ask for accommodation to help to perform your job? Yes No

Who did you ask ? (name and title) _____ When did you ask? _____

If yes, what accommodation did you ask for? _____

If no, do you think it was obvious to your employer that you needed accommodation? Yes No

Were you accommodated? Yes No If yes, what accommodation was provided? _____

OREGON VICTIM OF CERTAIN CRIMES LEAVE ACT (OVCCLA) CLAIMS ONLY

Victims of Domestic Violence, Stalking, and Sexual Assault

OVCCLA grants protected leave and reasonable safety accommodations to victims of domestic violence, sexual assault and stalking when seeking help for themselves or their minor children or dependents.

If you are requesting nondisclosure of your address*, please provide alternate CONTACT INFORMATION:

Contact Name _____ Phone # _____

Address _____

Contact person name: _____ Contact phone number: _____

* A request may need to be supported with evidence that you or a family member residing with you has been a victim of domestic violence. ORS 192.445(2)(b).

Are you or your minor child or dependent a victim of domestic violence, sexual assault or stalking? Yes No

When did you tell your employer you wanted to use the OVCCLA? _____

How and to whom did you give notice? _____

Did you request a safety accommodation? If yes, describe: _____

Did you request leave from work for OVCCLA purposes? Yes No

Was your leave approved? Yes No If no, what reason did your employer give for denying you leave?

Why did you want to take OVCCLA leave?

- Seek legal or law enforcement assistance
- Obtain services from a victim services provider
- Get counseling from a licensed mental health professional
- Get medical treatment or recover from injuries
- Relocate or make an existing home safe

First date of leave: _____ Last date of leave: _____ Continuing? _____

STATEWIDE SICK LEAVE/PORTLAND SICK LEAVE

To qualify for Statewide **Paid Sick Leave** the employer must employ **10 or more employees** within the state of Oregon. An employee accrues sick leave at one hour for every 30 hours worked or an employer may choose to "front-load" 40 hours of leave at the beginning of the year. An employer who employs fewer than 10 employees in Oregon is required to provide unpaid sick leave.

If the employer has **6 or more employees** within a city exceeding 500,000 (Portland), the employer may be required to provide **paid sick leave**. An employee may accrue sick leave at one hour for every 30 hours worked or an employer may choose to "front-load" 40 hours of leave at the beginning of the year. An employer who employs less than 6 employees in Portland is required to provide unpaid sick leave.

Does your employer employ 10 or more employees in the State of Oregon? Yes No

Does your employer employ 6 or more employees in a city exceeding 500,000 (Portland)? Yes No

When did you tell your employer that you planned to use sick leave? _____

How did you give notice (e.g. written, verbal), and to whom? Explain briefly: _____

What kind of sick leave did you use or plan to use (check one):

- | | |
|--|--|
| <input type="checkbox"/> Your own health condition | <input type="checkbox"/> To care for an infant/adopted child |
| <input type="checkbox"/> Parental leave | <input type="checkbox"/> To deal with the death of a family member |
| <input type="checkbox"/> A family member's health condition | <input type="checkbox"/> Sick child leave |
| <input type="checkbox"/> To seek medical treatment/recover from injuries caused by domestic violence | |

Was the requested leave continuous or intermittent/repeated? _____

If the leave is/was for your own or a family member's serious health condition, what was the diagnosis?

If you have returned from leave, were you returned to the job you held at the time your leave started? Yes No

If no, what reason did your employer give? _____

If no, did your job still exist? Yes No If no, was an equivalent position available? Yes No

If yes, were you placed in that position? Yes No If no, what reason did your employer give? _____

Has your employer retaliated against you for using or trying to use paid/unpaid sick leave? Yes No If so, how?



**Oregon Bureau of Labor and Industries
CIVIL RIGHTS DIVISION
Public Accommodation Discrimination Questionnaire**

Please Print Clearly. (This is not an official complaint.)

COMPLAINANT INFORMATION

Name _____
(First) (Middle Initial) (Last)

Mailing Address _____

City/State/Zip _____

Home Phone _____ Cell _____

Date of Birth _____ Gender: Male / Female

E-Mail Address _____

Q Rec Date

Contact information. Name, address, and phone number of a person who does not live with you but will know how to contact you:

Name _____

Address _____

City/State/Zip _____

Phone Number () _____

Attorney representing you in this civil rights complaint (if any):

Name _____

Firm Name _____

Address _____

City/State/Zip _____

Phone Number () _____

Last Date of Harm

RESPONDENT INFORMATION (list all of the following information about the party you are complaining against)

Company Name _____

Street Address _____

Mailing Address (if different) _____

City/State/Zip _____

Phone Number () _____ County _____

Contact Person _____ Title _____

This section for office use only

File # _____

Priority: _____

Assigned to: _____

Date: _____

Drafted on: _____

Contract	Juris	Basis
_____	PA	_____
_____	PA	_____
_____	PA	_____
_____	PA	_____
_____	PA	_____

Branch _____ County _____

First contact: _____

First DOD: _____

Most recent DOD: _____

Public Accommodation Discrimination Questionnaire

5. What reason(s) were you given for the action about which you are complaining? _____

6. Please name others who were treated similarly to you under the same conditions and explain why you think they were treated similarly to you.

7. Please name others who were treated differently than you were, under the same conditions and explain why you think they were treated differently from you.



**Oregon Bureau of Labor and Industries
CIVIL RIGHTS DIVISION
VOCATIONAL/PROFESSIONAL/TRADE SCHOOL
DISCRIMINATION QUESTIONNAIRE**

Please Print Clearly (This is not an official complaint.)

COMPLAINANT INFORMATION

Name _____
(First) (Middle Initial) (Last)

Mailing Address _____

City/State/Zip _____

Home Phone _____ Day _____ Cell _____

F-Mail Address _____ Date of Birth _____ Gender: M F

Race: _____ National Origin _____

Contact information. Name, address, and phone number of a person who **does not live with you** but will know how to contact you:

Name _____

Address _____

City/State/Zip _____

Phone Number (_____) _____

Attorney representing you in this civil rights complaint (if any):

Name _____

Firm Name _____

Address _____

City/State/Zip _____

Phone Number (_____) _____

This section for office use only

File # _____

Date Drafted _____

Contract/juris/basis branch

VO

First contact _____

First DOD _____

Most recent DOD _____

County _____

Q Rec Date

Last Date of Harm

RESPONDENT INFORMATION (list all of the following information about the party you are complaining against)

School or College Name _____

Street Address _____

Mailing Address (If different) _____

City/State/Zip _____

Phone Number (_____) _____ County _____

Contact Person _____ Title _____

**CIVIL RIGHTS VOCATIONAL/PROFESSIONAL/TRADE SCHOOL
DISCRIMINATION QUESTIONNAIRE**

5. Why did this happen to you? _____

6. What reason(s) were you given for the action about which you are complaining?

7. Please name others who were treated similarly to you under the same conditions and explain why you think they were treated similarly to you. _____

8. Please name others who were treated differently than you were, under the same conditions and explain why you think they were treated differently from you. _____



Bureau of Labor and Industries
Civil Rights Division
800 NE Oregon St., Suite 1045
Portland, OR 97232

NOTICE

IF YOU HAVE OR WILL BE FILING A COMPLAINT FOR PUBLIC ACCOMMODATION:

Even if you are filing a complaint with the Bureau of Labor and Industries (BOLI), if you wish to preserve the right to file a suit in Circuit Court you have to file within the one year of unlawful occurrence pursuant to ORS 659A.874(4).

If you wish to protect your right to file in Circuit Court, you are encouraged to consult with an attorney as soon as possible concerning these requirements.

Section I. Processing Wage Claims and Complaints

INTAKE PROCESS

1. Date-stamp the date the wage claim or complaint is received on the front of the wage claim or complaint form in the lower right-hand corner. (In some offices, a receptionist or other person opening the mail will do this.) If the claim or complaint is being returned by the wage claimant/complainant after having previously been submitted, and has been previously date-stamped, date stamp the claim again with the latest date received. See Intake Procedure for data entry procedure for returned wage claims.
2. Non-wage claim complaints (relating to matters other than unpaid wages such as violations of the child labor or farm labor contractor laws; failure to provide rest breaks or meal periods; irregular paydays; failure to provide itemized pay statements; failure to provide timely paychecks upon termination, etc.) submitted in the form of a letter or on a "Complaint Form" (WH-22) should be referred directly to the appropriate Screener for handling and Intake data entry (see #16 and County Assignments for Field Offices in Appendix). Note: Corp checks for complaints are done by the Screener in Portland and by Intake staff in the field offices.

Review the wage claim to determine whether it appears to be a "**Priority**" (Wage Security Fund, Prevailing Wage Rate, Farm/Forest Labor, Overtime with Statute of Limitations running, or code 3 (minimum wage and/or overtime) wage claim (see numbers 4, 5, 6, 7 and 8 below). These wage claims should be processed by Intake and referred to the appropriate Screener as soon as possible and ahead of all other claims processed by Intake. Repeat WSF claims should be referred directly to the Compliance Specialist handling the original claim at the next case assignment meeting. Repeat PWR files go to the PWR screener.

3. A wage claim may be a Wage Security Fund ("WSF") claim if the claim is against an employer that has already been designated as a Wage Security Fund case (see program and subject codes in Intake) or the wage claim indicates that the business has closed (see #8 "Status of Business" on wage claim form). If you have questions regarding whether or not a wage claim appears to be a WSF claim, consult your supervisor or the screener for assistance.
4. A wage claim may be a Prevailing Wage Rate ("PWR") claim if the claim is against an employer against which there is already an on-going PWR investigation (see program and subject codes in Intake) or the wage claimant indicates on #28 of the wage claim form that construction work was performed on a "public works" project or for a public agency such as a school or any other public building, a road project, etc. If you have questions regarding whether or not a wage claim appears to be a PWR claim, consult your supervisor or the PWR screener for assistance.
5. A wage claim or complaint may be a Farm/Forest Labor claim/complaint if the claim/complaint is against a person or business identified by the claimant/complaint as a farm or forest labor contractor, farmer or agricultural employer on the wage claim form or complaint (refer to Employer's Business Name in #4 and "Type of Business" in #6 on the wage claim form) or the claimant/complainant indicates that they performed farm or forest work in #28 of the wage claim form or in their complaint.

6. A wage claim for overtime when the statute of limitations is running is a **priority** claim. If the employer responds to the "Demand Letter", alert your supervisor so this claim can be assigned at the next case assignment meeting.
7. A wage claim for minimum wage and/or overtime is a **priority** claim and will be coded a (3) by the screener when returned to Intake.
8. Do a Corp Check (see page 7) to verify the name of the employer. Print a Corp. Check for all the various ways the employer has registered with the Corporation Division (i.e., The employer's business name is registered as an ABN (assumed business name) and other names are listed on the corp. check (i.e., corporation name, limited liability company name, etc.) Print off all copies of all the various different ways the employer has registered the business in Oregon. Two-hole punch the corp. checks and fasten them with a prong holder to the inside of the back cover of the claim file. Note whether there have been previous claims/complaints against the employer and/or there are currently any open claims/complaints indicated in the database (see #10 below).

If the employer appears to be a construction or landscaping contractor, do a Construction Contractors Board ("CCB") or Landscape Contractors Board check (see page 14).

If the wage claimant indicates that the business is closed or has gone bankrupt (line 7 of the wage claim form), do a bankruptcy check using the Pacer on-line electronic court system. (See pages 31-35 for instructions on how to perform a query).

Enter the wage claim information in the Impact database following the Impact User Handbook data-entry procedure. Wage claims should be entered on the same date they are received if possible. (If wage claims cannot be entered within three business days of receipt for any reason, notify your supervisor.)

9. Prepare a Wage Claim Screening Checklist (WH-29), entering the name of the screener to whom the claim will be referred; the name of the employer; the applicable employer NAICS (North American Industry Classification System), the name of the claimant, the Impact File # assigned the wage claim; any employer "Checks" (e.g., "Corporation," "CCB," "Landscape Board") you have already performed, and any relevant "Employer History" information. If there are multiple wage claims filed against the same employer, a Screener Checklist should be prepared for each wage claim. (Unless the claim is a repeat Wage Security Fund, refer multiple claims received against an employer to the Screener even if previously-received claims against the employer have already been assigned to a Compliance Specialist.)
10. Determine the closest NAICS code for the employer business type (see #6 "Type of Business" on wage claim form) using the division NAICS code list (g:\whd\naics\naic.doc (02/02)). If you cannot find the correct NAICS code by using the division list, go to the "List of Values" section (page 20-21) in your Impact manual and look up NAICS codes and follow the instructions on how to look up by business type. If you still can not determine the appropriate NAICS code, use 90000, ("Nonclassifiable Establishments") as the NAICS code.

FILE SET UP

1. Prepare a file for the wage claim(s). If there are multiple claims against the same employer, only one file folder need be prepared. Two-hole punch both front and back of file folder.
2. Attach a Route Slip (WH-25) to the outside of the file using a metal prong.
3. The inside of the file should include the following:
 - A. Case Diary Sheet (WH-69) using a metal prong on the left inside of the file folder with the following information completed on the form:
 1. Employer name
 2. Employer's address
 3. Employer's telephone number
 4. Name of the claimant(s)—If there are more than two claimants, check the space indicating that "additional claimants" are listed on the second page, and prepare an additional page(s) of claimants and applicable claimant information
 5. The Impact file # and main file# (see Impact procedure for more information)
 6. The claimant's driver's license number (see #3 on the wage claim form)
 7. The claimant's home and message telephone numbers
 8. The date the file is being prepared
 9. A notation in the "Action" section of the case diary indicating "data entry/file setup" as an activity performed
 10. The amount of time (to the nearest quarter hour) taken to perform the data entry/file setup
 11. Appropriate entry if file is being sent to a different office for screening (i.e. "Sent to Eugene (Portland, Salem) Screener", and amount of time to the nearest quarter hour.
 12. Your initials
 - B. Each wage claim should be two-hole punched at the top and fastened to a cardboard with metal prongs in the following order:
 1. Wage Claim (WH-10)
 2. Assignment of Wages (WH-10-A) if returned by the claimant
 3. Completed Calendar forms (WH-127) if returned by the claimant
 4. Examples of Evidence form (WH-207) if returned by the claimant
 5. Any other records/evidence/information submitted by the claimant with the wage claim form
 - C. A Screener Checklist (see #8) should be two-hole punched and placed on top of each wage claim/cardboard.
 - D. The back (right side) of the file folder should also be two-hole punched with the following documents attached from the bottom up:
 - Corporation Division information relating to employer if any
 - Construction Contractors or Landscapers Board information if applicable
 - Bankruptcy Check from Pacer.

Make sure that when hole-punching documents, holes are not punched through text or other information. If hole-punching will result in damage to information in a document, tape the document(s) to a blank sheet of paper and hole punch the blank paper. Try to line up the hole-punched documents, if possible, so they are consistently placed in the file. If the number or amount of documents are voluminous, consult your supervisor about whether they should be hole-punched or not.

4. A label should be made for the file folder with the following information in 12-pitch font:
 - A. 1st line, left side: Employer name (If the employer name is long and won't fit on one line, use two lines.)
1st line, right side: Impact file number (**Make sure the claimant/employer names on the label match the names entered in Impact.**)
 - B. 2nd line, left side: Employee last name, first name, middle initial. (Indicate there are additional claimants by adding "et al" following the claimant's name.)
 - C. 2nd line, right side: Date claim received (month/date/year)
5. Review the wage claim/complaint to determine which BOLI office should process the claim/complaint. The county in which the employer is located determines this. (Refer to the "County Assignments for Field Offices" chart in the Appendix section.)
6. Route the claim to the appropriate Screener for review. Indicate the date the file is being routed on the Route Slip where indicated; to and from whom the file is being routed; and any other relevant information in the comments section. Also enter this routing information in Impact, following the Impact User Handbook procedures.
7. After receiving the wage claim(s) back from Screener, review the Screening Checklist (WH-29) for additional information to be entered in Impact and directions for further processing the wage claim provided by the Screener.

If the wage claim is incomplete, the Screener may return the claim to the claimant with a Request for Wage Claim Information form (WH-23), requesting additional information. The Screener will close the claim in Impact, using closure code 43 ("Closed - Returned to Claimant"), and route the file back to Intake, noting the date by which the claimant is required to return the claim with the additional information requested. The WH-23 (Request for additional information) sent to the claimant will include a return envelope with the appropriate Intake person's initials and the Impact file number on the front. If the information requested is returned by the claimant within 30 days, Intake will re-open the claim in Impact using the original received date, and route the claim to the Screener. If the claimant returns the requested information after 30 days, the Intake person will open it as a new claim and enter a new file number in Impact for the claim and return the refiled claim to the Screener for screening. The Intake person will horseshoe-link the old and the new file.

8. Prior to routing the claim back to Intake for demand, the Screener will enter the designated program and subject code for each claim in Impact. If a claim contains both minimum wage and overtime amounts, screener will indicate those figures in the "other instructions line of the screener checklist. These should be entered as separate amounts in the restitution screen.

9. Perform any "checks needed" indicated by the Screener that have not yet been done and make sure that all checks performed have been indicated in Impact where indicated.

DEMAND PROCESS

1. If the Screener indicates that a Notice of Claim (WH-3) should be sent, produce the document in Impact, inserting the variable language provided by the Screener (amount of claim, dates of claim, rate of pay, etc.) If there is more than one address listed for the employer's business (i.e., the employee shows one business address on their claim form and the corp. check shows another business location for the employer), enter any alternate location in the upper right hand corner just before you print off the Notice of Claim letter. Mail both copies of the letter to the employer at the various different locations. If there are multiple wage claimants, use form letter WH-3M. Establish the "due date" for the employer response by counting 10 business days from the date of the Notice/letter and enter this date in the letter. (If this date falls on a Saturday, Sunday, or holiday, use the next business day as the due date.) Enclose an "Employer Response" form (WH-3R) and self-addressed return envelope with the demand letter. Note: Notices of Claim should be mailed by Intake within five business days after being returned by the Screener. If the Notice(s) cannot be sent within five working days, notify your supervisor.
2. If the Screener indicates that a "Benefit Notice of Claim" should be sent, use the benefits Notice of Claim letter (WH-3B) in Impact. Establish the "due date" for the employer response by counting 10 business days from the date of the Notice/letter and enter this date in the letter. (If this date falls on a Saturday, Sunday, or holiday, use the next business day as the due date.) Enclose an "Employer Response" form (WH-3R) and self-addressed return envelope with the demand letter.
3. If the wage claim is a Wage Security Fund claim, a Wage Security Fund Notice of Claim (WH-175 or WH-175M in the case of multiple claims) should be sent to the employer, with a WSF Employer Information form (WH-176) and self-addressed envelope. The "due date" for the employer's response in a Wage Security Fund case is 5 business days (excluding Saturdays, Sundays, and holidays) from the date of the Notice of Claim. Hold the file as a "Pending Assignment" until the Wednesday morning case assignment meeting. Any new WSF claims received before the case assignment meeting on Wednesday still need to be screened by the screener and the WSF Demand letter sent then held for Wednesday assignment. Repeat WSF claims that have already had the main file assigned to the compliance specialist will be set up on cardboard and routed directly to the compliance person.
4. Check to see whether there are any "Other Instructions" on the Screening Checklist, and follow any applicable directions. If you have any questions regarding the instructions, ask your supervisor or the Screener.
5. Make a copy of the Notice of Claim letter and file it on top of the corp check on the back cover, mail the original to the employer, and hold the file in the "ER response" section behind the due date for the employer's response.
6. Update the activities field in Impact to reflect actions taken, referring to the Impact Users Handbook as needed.

7. If no response to the Notice of Claim is received from the employer by the due date in the letter (or a response is received disputing the claim), **and the claim is for less than \$50, and it is not a minimum wage/overtime time claim, or if it is for unpaid benefits only** (e.g., claims for unpaid vacation or severance pay), close the claim, sending the wage claimant a WH-201 closing letter; Small Claims Court information (WH-130); and a copy of the employer's response if any. Update Impact, reflecting the disposition of the claim following the procedure in the Impact Users Handbook.
8. If a check is received from the employer and appears to be for the amount in the Notice of Claim, prepare a "closing letter" (WH-4A) to be sent to the claimant from Fiscal along with the check following the Money Handling Procedure beginning on page 10. File a copy of the check and employer response (if any) on top of the demand letter on the back file cover. Make a copy of the closing letter to the claimant and file it on top of the wage claim.) Update the restitution and activities screens in Impact following the procedures in the Users Handbook. Close the file coded "01/paid." Print a WH-60 from Impact, and place it in the file on top of the check copy/ER response.

If the check received does not appear to be payment in full for the claim, refer the claim and copy of the payment received to the Screener* for further directions.

The screener* will call the employee and ask if they wish to accept or reject the payment received. If the payment is accepted, the screener will return the file to Intake to send the regular closure letter (WH-4-01).

If the employee rejects the payment and the claim is not for unpaid benefits, the claim will be returned to Intake for assignment to a compliance specialist.

If the claim is for unpaid benefits, the screener* will explain to the claimant that if the claimant refuses the payment, the check will be returned to the employer and no further action will be taken by the division.

If the claimant rejects the payment and the claim is for unpaid benefits, the check will be returned to the employer by the screener*, along with a claim closure letter explaining the employee rejected the partial payment and may seek private action. The claimant will be sent a closure letter.

*In the field offices, the phone call to the employee will be made and appropriate closure letter sent by Intake.

9. If the wage claim is returned from the Screener indicating that it should be assigned to a C.S. for investigation, hold the file in Pending CS Assignment area by date received on the file label. With the exception of "priority" claims (Wage Security Fund, Prevailing Wage Rate, Farm/Forest Labor, Minimum Wage and/or Overtime) or claims otherwise designated as "priorities" by a supervisor such as partial payments), files to be assigned should be filed in the order in which they were received, so the oldest claims are assigned first.
10. Cases will be assigned on Wednesdays during the compliance staff case assignment meetings. When "assigning" a wage claim to a C.S. for investigation, "route" the file on the Route Slip on the outside of the file folder and in Impact.

ROUTING FILES BACK TO SCREENER

This section will explain when files should or should not be returned to the Screener for review. It will not apply to benefit claims or claims under \$50 that would normally be closed at Intake level after the initial demand.

1. ER RESPONSE 'YES', EVIDENCE 'YES' When the file is marked "Evidence: Yes" on the upper left side of the file route slip and the employer responds to the notice of claim letter disputing the wage claim, insert the employer's response on top of the demand letter on the back cover. Note "ER Response received" on the Case Diary sheet and in Impact Activities, route to Pending CS Assignment in Impact and hold file in Intake assignment bin in order of date received on the file label. **EXCEPTION: If response indicates claimant was paid directly (check copies), reroute file to screener for claimant verification. If claimant calls BOLI prior to demand letter being sent and states they were paid directly, give file to Intake and close under Closure Code 80 – General Closure and send letter 78 (Claimant Requests Closure) to claimant. Do not enter restitution. If claimant or employer contacts BOLI after the demand letter is sent and states payment was made directly to the claimant (screener will verify if information is from claimant), enter restitution, close under Closure Code 01 and send letter 07 to claimant.**
2. ER RESPONSE 'NO', EVIDENCE 'YES' When the file is marked "Evidence: Yes" and the employer fails to respond to the notice of claim, mark the file "No ER Response" on the Case Diary Sheet and in Impact Activities, route to Pending CS Assignment in Impact and hold file in Intake assignment bin in order of date received on the file label.
3. ER RESPONSE 'YES', EVIDENCE 'NO' When the file is marked "Evidence: "No" and the employer has responded:

In the Eugene and Portland offices, route the file to the screener to review. If the employer does not admit liability for the wages in the response, Screener will send "Request for Evidence" letter to the claimant. Screener will hold file in "Evidence Letter" section and wait for claimant to respond with evidence or until the ten business day deadline has expired. If evidence is returned, Screener will route the file to "Pending CS Assignment" and return to Assignment Bin. If claimant does not respond, file will be closed with Closure Code 02 (Lack of Evidence) by screener.

In the Medford and Salem offices, Intake will review the Employer response. If the employer does not admit liability for the wages in the response, Intake will send a "Request for Evidence" letter (WH-5 or WH-5S), along with an "examples of evidence" checklist (WH-207 or WH-207S) to the wage claimant. Insert a response deadline date of ten calendar days in the body of the letter. If evidence is returned, route the file to "Pending CS Assignment" and hold in Assignment Bin. If claimant does not respond, close the file using Closure Code 02 (Lack of Evidence). If it is not clear, request assistance from your supervisor or the screener.

4. ER RESPONSE NO, EVIDENCE NO When the file is marked "Evidence: "No" and the employer has not responded:

In the Eugene and Portland offices, route the file to the screener to process the "Request for Evidence" letter. Screener will hold file in "Evidence Letter" section and wait for claimant to respond with evidence or until the deadline has expired. If evidence is returned, Screener will route the file to "Pending CS Assignment" and return to Assignment Bin. If claimant does not respond, file will be closed with Closure Code 02 (Lack of Evidence) by screener.

In the Medford and Salem offices, send a "Request for Evidence" letter (WH-5 or WH-5S), along with an "examples of evidence" checklist (WH-207 or WH-207S) to the wage claimant. Insert a response deadline date of ten calendar days in the body of the letter. If evidence is returned, route the file to "Pending CS Assignment" and hold in Assignment Bin. If claimant does not respond by the deadline, close the file using Closure Code 02 (Lack of Evidence). If this is unclear, ask your supervisor or the screener.

5. If the employer response includes a check for partial payment of the claimed amount: Portland and Eugene Intake should route the file to the screener, who will notify the supervisor. The claim will be flagged as a priority assignment at the next case assignment meeting. Supervisor notification of partial pay checks in Medford and Salem should be made by Intake. The file and check are not to be routed back to Eugene screener.
6. If the claim is for overtime and is within 90 days of the two-year statute of limitations: The screener will note it as a PRIORITY CLAIM by checking "Other" on the screener checklist and noting "OT CLOCK IS RUNNING" on the route slip under the label side. Intake will notify the Supervisor as per above that the file needs to be flagged for assignment after the employer response is received and route to "Sup" in Impact.

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PROCEDURE: Screening and processing wage claims and complaints.

PURPOSE: To ensure that complete and accurate information is obtained in order to appropriately process wage claims and complaints filed with the Wage and Hour Division.

STAFF: Administrative Specialist II – Screener

REFERENCE ALSO: FOM Volumes I through VI and Impact Manual

PROCEDURAL STEPS

Wage claims should be screened as soon as possible; within four working days of receipt. Wage Security Fund (WSF) claims are priority claims and should be screened prior to other non-WSF claims. Possible prevailing wage rate claims should be referred to the PWR Unit for review.

Routine complaints should be processed as soon as possible; within four working days of receipt. Child labor complaints alleging that minors are currently being employed in prohibited or hazardous occupations are priority complaints. They should be screened immediately when received and referred to the Operations Support Manager (prior to a warning letter being generated) for further direction. Complaints alleging that a minor is currently employed in a prohibited or hazardous occupation may be taken by telephone, and should be referred to the Operations Support Manager for further direction.

Farm/forest labor contractor-related claims and complaints should be referred to the Compliance Manager in the Salem office.

If more than four (4) working days are required to process pending wage claims/complaints, notify the Operations Support Manager.

I. WAGE CLAIMS

Review the claim to make certain that all information fields are complete or, if not, reasons are provided for the omission, e.g. N/A, unknown, etc. E-Mail Address, Driver License #, Business Owner's Name, County, Type of Business, and item #24 Have You Asked Your Employer For Your Wages are not required fields for processing the claim. All other fields are absolutely required. Review each section of the claim with special attention to the following:

Line #s:

1. Be sure that the claimant's name is the same person who signed the Assignment of Wages form. It is not required that the signature of the person on the Assignment of Wages be identical to the name provided on the wage claim form, as long as it is clear that it is the same person, e.g., if the name provided on the wage claim is Jim Smith and the signature on the Assignment of Wages is "James Smith," this is acceptable. The claimant must be the person signing the assignment of wages form. It may not signed by a family member or another person.

Check the claimant's birth date to ascertain whether the claimant is a minor under 18. If so, note any information provided indicating a possible violation of child labor laws. If there are

possible child labor law violations (including the employer not having an annual employment permit) email the operations support manager for further review. In the subject line enter 'Possible Child Labor Violations'. (Mark the email Priority.)

2. Check for a complete address for the claimant. If the address is incomplete try to obtain a complete address by contacting the claimant.
3. Verify that there is at least one telephone number where the claimant may be contacted. If a telephone number is not provided but an email address has been provided attempt to contact the claimant via email to get a contact telephone number. A claim will be accepted without a claimant telephone number.
4. Check that the employer's name (business owner's name and/or name of the business) is provided. If the name is incomplete or missing try to obtain a complete address by contacting the claimant.
5. Confirm that an address for the employer is provided. If the address is incomplete try to obtain a complete address by searching the internet or contacting the claimant.
6. Check for a telephone number. If a telephone number is not provided try to obtain a telephone number by searching the internet. A claim will be accepted without an employer telephone number. If the "TYPE OF BUSINESS" indicated is logging, contracting, building construction or allied trades, real estate, hauling, etc., review the information which may indicate work was performed on a public work (subjecting it to the PWR law), FLSA coverage, the claimant performed work as an outside salesperson, was paid on a commission basis, etc. Note the number of employees. If the number of employees exceeds ten, keep in mind that a claim for unpaid overtime wages may be subject to the FLSA (federal law) and an issue to refer to the US Department of Labor (USDOL). If so, follow the USDOL referral guidelines listed in section VI.
- 7-8. Check to see if the status of the employer is marked "Bankrupt," "Business Sold" or "Other" (seizure, receivership, insolvent, etc.), Check to see if the status of the business is "Still Open" or "Closed." If closed, check to see if the closed date has been entered.

If "Bankrupt" is marked, perform a bankruptcy check. (See Bankruptcy Check procedures; see also the procedures regarding Wage Security Fund (WSF) claims in section IV.)

If receivership is noted, refer the wage claim to the Operations Support Manager immediately for further action.

Chapter 7 bankruptcies that qualify for payment from the WSF should be processed accordingly. (See Section III.) In cases where wage claims do not qualify for payment from the WSF, send the claimant a chapter 7 closing letter (WH-166) and close the claim – 53-Closed Bankruptcy.

If a Chapter 11 or 13 bankruptcy has been filed, check to see if the business has closed before refusing or closing the claim. If the business has closed, the claim should be screened as a WSF claim (Section III). If the business is still operating, inform the claimant(s) that he or she must file his or her own proof of claim in the U.S. Bankruptcy Court due to the bankruptcy provisions that stay creditors from attempting to collect wages.

(Send the Chapter 11/13 closure letter (WH-166) and close the claim - 53-Closed Bankruptcy.)

Exception to the general rule regarding Chapters 11 and 13: If the wages were earned after the bankruptcy was filed and the reorganization plan has been accepted by the court, the claim should be processed according to normal procedures, without regard for the bankruptcy.

If the bankruptcy check indicates "no records found," even though the claimant has indicated the employer is bankrupt, proceed to screen the claim per procedures. Place a copy of the Pacer bankruptcy check in the file.

9. Check that the "first workday" and "last workday" dates are provided.
10. Check the dates for which claimant has not been paid: "FROM" date and "TO" date. Make sure these dates match those on the calendar forms (WH-127.)

Compare the period of the claim on line ten (10) with those dates shown on line nine (9) and the calendar sheets for consistency. If they are different, make a note to ask for an explanation and note any explanation provided on a contact report. If the claim period is after the last day of work, it may indicate that the claim is for penalty wages. If so, contact the claimant and explain that BOLI does not pursue collection of penalty wages unless BOLI is unable to collect unpaid wages determined to be due and pursues a claim by initiating an administrative action or court proceeding.

Check the "FROM" date to see if more than one year has elapsed since the violation first occurred. Check the last day of work on line 9 to see if more than six months have elapsed since the claimant's last day of work. If the answer is yes to either of these, according to BOLI's acceptance policy, the claim should be closed and the claimant referred to small claims court or a private attorney. **This does not apply to claims involving minimum wage or overtime or WSF claims.**

11. If the claimant marked that employment was covered by a union contract, contact the claimant to explain coverage. BOLI will not take a union claim when all of the following circumstances are present:
 - a. There is or was a collective bargaining agreement in effect; and
 - b. The claimant is a party to the agreement (i.e., a dues paying member); and
 - c. The claimant is engaged in interstate commerce; and
 - d. The collective bargaining agreement has a grievance procedure; and
 - e. The issue is grievable under the grievance procedures; and
 - f. The grievance procedure requires binding arbitration; and
 - g. The claim does not involve a minimum substantive guarantee (i.e., minimum wages, final pay) or other statutory right independent of those arising out of the collective bargaining agreement; and
 - h. There is no evidence that the union has failed to represent its member(s) fairly under the contract, using the grievance procedure would be futile, or the employer has failed to abide by the grievance procedure.

There is an exception for claims eligible for payment from the WSF. See "Acceptance of Wage Claims from Employees Covered by Collective Bargaining Agreements" in the Policy

section of FOM Volume I. Questions concerning this issue should be directed to the Operations Support Manager.

- 12.-13. If the claimant indicates that private legal action has been taken against the employer, check the EXPLAIN line to see what type of action has been initiated. If it appears that the action is current, contact the claimant to advise that BOLI will not pursue a claim while private legal action is occurring at the same time, and if private action is chosen, the claim will not be accepted.

If the claimant advises the Wage and Hour Division that a grievance has been filed through a union, proceed according to line 11 above.

If action is past, and the union has processed it, or a court of law has ruled on it, BOLI has no jurisdiction and a claim will not be accepted.

14. Check the items marked in the "THIS CLAIM IS FOR" section. If only the "Benefits" box is marked, check to see that the Vacation and Other Benefits section - line 27 has been completed. If this section is incomplete contact the claimant for missing needed information. Benefits are pursued only through a demand letter. Send the WH-3B/Benefit Demand Letter.

If the claim involves overtime, make sure that no exemptions from overtime are applicable as indicated in FOM Volume III (ORS 653.020 or OAR 839-020-0125).

15. Check to see if overtime was formalized by an agreement and if the "WHAT WAS THE OVERTIME AGREEMENT" section has been completed. (This is not a requirement for overtime hours worked over 40/week, but may be helpful in determining other overtime agreements.)

16. Check to see what the rate of pay was during the time claimed.

If the claim is for commissions only, BOLI will only accept commission wage claims that involve the following:

- a. Failure to pay minimum wages; and/or
- b. Wage Security Fund claims.

See "Commission Wage Claim Policy" in FOM Vol. III/Policy Section.

If the claim is for a commissioned employee who did not receive at least minimum wage (and is not exempt from the minimum wage statutes) check that the claimant has completed the calendar sheets.

If the claim is for unpaid minimum wages that include overtime and commissions, keep in mind that BOLI cannot use commissions to either calculate the overtime rate or to meet the payment of overtime. The USDOL uses commissions both to calculate overtime and to meet it. Therefore, in cases involving overtime and commissions, refer the claimant to the USDOL. (See Section VI "Wage Claim Referral Procedure for the USDOL." See also FOM VOL III/Interpretation Section - "Overtime and Commissions.")

Regardless of whether the rate of pay is hourly, weekly, monthly, or annual, be sure the claimant has completed the calendar sheets.

For claims involving piece rate wages, check to see that the following questions are answered:

- a. What is the unit of measure?
- b. What is the number of units? Documentation should be provided if available. The number of units produced and hours of work each day should be provided on the calendar sheets.
- c. Check to see if the claim involves multiple piece rates. If so, and the claim does not involve minimum wage or overtime, or the claimant is engaged as a truck driver or driver's helper; or the claimant has not maintained simultaneous piece rate records; BOLI will not accept the claim.

17. Check to see how many hours a week it was agreed the claimant's salary covered.

If the claimant was a salaried employee, the claimant must show how many hours a week the salary covered. If unknown, contact the claimant to see how many hours of work the claimant normally worked each week for the salary received.

18. Check to see how much in wages the claimant indicates should have been paid (before taxes) during the period identified in line 10.

Evaluate the figure as the gross amount of wages the claimant should have been paid. If it isn't clear, contact the claimant to ask how he or she arrived at the amount.

19. Check to see how much the claimant was paid (before taxes) for the period identified in line 10.

20. Check to see how much claimant believes the employer still owes (line #18-#19=#20). If the amount claimed as owed is over \$10,000 it is BOLI's policy not to process these claims. If the amount is under \$50.00 and does not involve minimum wage or overtime, BOLI does not process claims for under \$50.00 any further than the initial demand letter WH-3B. This does not apply if the employer has a history of not paying employees under \$50.00 or to WSF claims.

21. Check to see if there is a dollar value provided for non-wage goods, property or services claimant received from employer: (rent, tools, meals, etc.). If so, consult with supervisor to determine whether amount should be deducted from the wage claim amount on line 20.

22. Verify that the claimant checked "Yes" to the question whether any of the work was performed in Oregon. If no work was performed in Oregon, refer the claimant to the state in which the work was performed or the USDOL if appropriate. (See Section V "Wage Claim Referral Procedure for the USDOL.")

23. Check to see if "EXPLAIN WHY YOU BELIEVE YOU ARE STILL OWED WAGES" has been completed. Make note if the claimant makes mention of having been issued check(s) with insufficient funds because if, for any reason, the claim is not going to be

accepted/processed and the claimant has mentioned having been issued checks with insufficient funds, the claim will be referred to the Wage and Hour Administrator for review. Do not open the claim at this time. It should remain in pending status until it has been reviewed by the Administrator.

24. Check to see if "HAVE YOU ASKED YOUR EMPLOYER FOR YOUR WAGES?" has been completed.
25. Check to see why the claimant believes the employer has failed or refused to pay wages owed.
- 23-25. If these lines are left blank or are unclear, contact the claimant for missing needed information.
26. Check to see the job title and description of duties during the time claimed. (If claimant indicates construction work was performed on commercial buildings and/or it appears the construction work may have involved a public works project, refer the claim to the Prevailing Wage Unit). Look at the title and duties of the position. Evaluate for:
 - a. If the claimant indicates s/he is a party of interest, officer/director of a corporate employer, related to the employer, or otherwise indicates a possible conflict of interest, contact the claimant regarding the specifics and explain to the claimant the possible non-acceptance of a claim under these circumstances.
 - b. If the claimant's job title reveals s/he is/was a bookkeeper or person having knowledge of records and possible other claimants, make a note to ask about the availability of records and where they are kept should you speak with the claimant. Record the information on a contact report (WH-92) for the benefit of the compliance specialist assigned to the case.
27. Check to see that the claimant has signed and dated the claim form.

OTHER

Check to see that the claimant has signed the "Assignment of Wages" (WH-10-A) form. The claim will not be processed unless this is signed.

On the front page of the Wage Claim form in Section 2, "How to File a Wage Claim," it states, "YOUR CLAIM WILL BE ACCEPTED ONLY IF YOU COMPLETE THE CALENDAR WITH THE HOURS WORKED AND PROVIDE DOCUMENTS OR WITNESS STATEMENTS SUPPORTING YOUR CLAIM." Check to see that calendars have been filled out appropriately and that some sort of evidence has been included with the wage claim. (See Examples of Evidence (WH-207).) If no evidence has been provided with the claim, change the status of the claim in IMPACT to "Pending - Out of office" and send the WH-23 letter to the claimant/complainant along with the WH-207 Examples of Evidence form asking for evidence. If the claimant responds that no evidence is available and that is the only information missing, an initial demand letter may be sent to the employer. However, if the claimant is unable to provide any documentation to support the allegations, BOLI will most likely close the claim for lack of evidence after the demand process has been completed. (See Section IX "Claim Closing Procedure.")

If the claimant/complainant refuses to complete the required BOLI forms, or has not established an allegation of an unlawful practice (i.e. the factual details of the claim), the claim should be closed.

If the claimant appears to be exempt from overtime and is claiming contractual compensatory time, the claim will be closed.

Check to see that the claim has been date stamped, corporate and history checks performed, and a construction contractor board check has been performed, if applicable (employer is a construction business).

II. SCREENING CHECKLIST SHEET (WH-29)

Using the Screening Checklist Sheet, the following items are to be completed by Intake staff during the file set-up:

- Employer Name
- NAIC Code
- Claimant Name
- IMPACT File Number
- Corporation Division Registration
- CCB License
- History Check

When the file is received from Intake, complete the following:

1. Program Code/Subject Code: Check for the correct program and subject codes on the checklist and enter the information in the IMPACT database. If the claim is for the WSF, also enter Impact program codes and subject codes for actual violations. Do not enter subject code for WSF.
2. NAIC Code: Verify that the correct NAIC code from the NAIC Codes sheet has been entered by Intake.
3. **Priority Claim:** If the claim is a priority claim, enter a check in the box reflecting the type of priority, or fill in the 'other' box. Priority claims are: WSF, OT with the two year Statute of Limitations running, a Partial Payment has been received, and all Program Code 3 wage claims (minimum wage and/or overtime).
4. Send Letter(s): Check any that may apply and send. Complete data entry in IMPACT "Activity" fields to show the letter sent, the date file was received by the screener, the date the letter was sent and the screener's initials/time. Print the letter(s) from IMPACT and place a copy on top of the screener checklist form.
6. Return to Claimant: If a claim comes into the office with missing vital information; i.e. no employer address, no signature on the Assignment of Wages, etc., complete the "Return to Claimant" form (WH-23) indicating what information is still needed. Make copies of the documents being returned for the file. Put a copy of the WH-23 on top of the screener checklist form. Send the original letter and wage claim back to the claimant. Complete the data entry in IMPACT "Activity" fields as "Returned to Claimant." File the file in the Intake "pending out of office" drawer.

7. If the wage claim is against a public agency, it may be necessary for a tort claim letter to be sent. The file should be routed to the Intake Unit, which will prepare a Notice of Tort Claim Revised WH-3T/Notice of Claim (Tort Demand). Send an e-mail to the Intake officer (with a copy to the Intake Unit supervisor) advising that a Notice of Tort Claim must be prepared and sent to the public agency. The tort claim letter will be sent in lieu of the regular Notice of Claim letter. The screener's e-mail to the Intake Unit should include the circumstances giving rise to the claim:

Example: Nancy Smith is claiming that she was "engaged to wait" between 8/1/11 and 9/19/11 for Western Oregon University at the rate of \$13.79 per hour for total gross wages she is claiming is owed of \$275.77. Ms. Smith filed a wage claim with the Bureau of Labor and Industries on 9/20/11.

8. Types of Records with Wage Claim: For all incoming claims, a copy of the employer's business registration with the Secretary of State's Corporation Division should be obtained. Additional items that may also need to be obtained include:
 - a. A copy of the employer's license registration with the Construction Contractors Board or Landscape Contractors Board, if the name of the employer or the nature of the duties performed suggest that the employer is a construction or landscape contractor.
 - b. If information in the claim suggests that the employer is out of business or bankrupt, a search of federal bankruptcy filings should be performed.
 - c. If the date of birth indicates that the claimant is a minor, a search of BOLI's child labor database should be performed to determine whether the employer has an employment certificate to employ minors.

Searches for the types of documents described above are performed by the Intake Unit.

9. Whenever a file is ready to be forwarded to the next stage of the wage claim process, write the date, action and name of the person to whom the file is to be routed on the route slip on the file's cover. Complete the IMPACT data entry as appropriate.

III. WAGE SECURITY FUND (WSF)

Perform initial screening unless the history check shows that a WSF file is already open and assigned to a compliance specialist. If a WSF case has already been established, subsequent claims should be set up by Intake (with the claim form attached to a piece of cardboard) and assigned directly to the compliance specialist.

1. If all the following elements are present, the wage claimant may be eligible for payment of wages through the WSF:
 - a. The business appears closed. (If the local office of the business has closed, but the employer is still operating essentially the same business in another Oregon location, the claim is likely not eligible for payout from the WSF.)

- b. Assets appear to be insufficient at the closure of the business to fully and promptly pay the wage claim. (Promptly is defined in OAR 839-001-0500 means the next regular payday established by the employer, or 35 days from the last payday, whichever is sooner.
 - c. Wages cannot otherwise be fully and promptly paid; i.e., no possibility of full and prompt payment through liens, bankruptcies, receivership, bonds, successor of interest, prime contractor, etc.; and
 - d. Wages claimed were earned within 60 days prior to closure of the business or, if the claimant filed a claim prior to the closure of the business, within 60 days of the claimant's termination.
2. For purposes of identifying the claim as a WSF claim at this stage of the screening process, sources of information are the wage claimant and/or lines #7 and #8 of the wage claim form.
 3. If the above criteria are met, request that the claimant complete the WSF claim packet.
 4. If the wage claim has been received by mail, and it is determined that the claim is a potential WSF case, mail the required WSF forms (WSF Assignment of Wages, WSF questionnaire, and W-4 form, and WSF letter) to the claimant.

The BOLI return envelope should have the case number and the Intake person's initials in the bottom left hand corner. Return the file to Intake for issuance of the WSF demand letter (WH-175) and assignment to a compliance specialist.

5. Complete the screening checklist and data entry before returning the claim to Intake for issuance of the demand letter and assignment. On the screener checklist, code the claim as a 1A in addition to the regular program code, and indicate Wage Security Fund in addition to the regular subjects. Indicate that the claim is a priority claim. Make a copy of the WSF letter showing the date sent and the date of the paperwork and put the copy in the claimant's section of the wage claim beneath the screening checklist.
6. When completed WSF forms are returned by the claimant, Intake will route the file back for screening. Complete the data entry (**be sure you've listed the claim as a "priority claim" in IMPACT**) and route the file to Intake to send the WSF demand letter (WH-175).

IV. WAGE CLAIM TRANSFER PROCEDURE

1. Intake completes the file set-up process and sends the claim file to the Portland screeners for screening. Claims for unpaid prevailing wages should be referred to the PWR Unit. Claims filed against a farm/forest labor contractor or an agricultural employer should be referred to the Farm Labor Unit in the Salem office. Claims or complaints alleging that minors performed work that is prohibited under the hazardous occupations orders should be brought immediately to the attention of the Operation Support Manager for further direction.
2. Upon receiving a transferred claim from Portland, Salem or Eugene Intake, screen the claim.

V. WAGE CLAIM/COMPLAINT REFERRALS TO THE U.S. DEPARTMENT OF LABOR (US DOL)

The US DOL and BOLI have entered into a Memorandum of Understanding (MOU), in which the agencies have identified issues to be referred to one another. (A copy of this MOU is in the Appendix of Vols. I, II, III, IV, and VI of the FOM.)

Pursuant to the MOU, BOLI has agreed to refer the following issues to the US DOL:

1. FLSA Overtime (with no wage claim or with a wage claim if it appears additional employees may be entitled to FLSA overtime);
2. "Resident Managers" of multi-unit accommodation facilities, (including mobile home/trailer-RV parks);
3. Requests for sub-minimum wages at federally covered firms.

The PWR Unit and Farm Labor Unit will refer the following to the USDOL:

1. Unlicensed farm labor contractors (federal); and
2. Federal Government contracts (Davis-Bacon and Service contracts, etc.);

Telephone Calls

Telephone callers inquiring about any of the above issues should be referred to the appropriate unit or the US DOL.

Wage Claims/Complaints

When a wage claim or complaint is received that appears to involve one of the categories above, refer the claim/complaint to the supervisor, noting the apparent referral category. If the supervisor agrees that the claim/complaint appears to be appropriate for referral to the US DOL, the supervisor will approve the referral. If the supervisor determines not to refer the claim/complaint to the US DOL, it will be returned for regular processing.

If the claim or complaint includes both US DOL issues AND matters that are also handled by BOLI (e.g., federal jurisdiction wage claims with possible Farm Labor Contractor (ORS 658) law issues/violations or issues for which BOLI sends "warning letters,") process the BOLI-related issues of the claim/complaint in accordance with normal procedures and refer the US DOL issues to the supervisor for review, noting what action has been taken. For example, if a complaint is received from an employee alleging an FLSA overtime matter which appears to involve multiple employees AND also complaining about rest and meal period violations, process the rest/meal period complaint following normal procedure (send a "warning letter"), note the action taken, and refer the overtime claim to the supervisor for review/referral if appropriate.

Serious Child Labor/Farm Labor Violations or Injuries

Pursuant to the MOU, BOLI and the US DOL have agreed to notify the other agency immediately upon becoming aware of a serious Child Labor or Farm Labor violation or injury. If information regarding an apparent serious child labor or farm labor violation or injury is received, notify a compliance manager or the division administrator immediately. The manager/administrator will advise the US DOL if appropriate and direct further action to be taken.

OTHER REFERRALS TO BOLI FROM US DOL

Any referrals received from the US DOL pursuant to the MOU should be referred to a compliance manager or the division administrator for review before further processing.

VI. PREVAILING WAGE RATE CLAIMS AND COMPLAINTS

Claims and complaints involving prevailing wages are screened by the PWR Unit Screener. Unless instructed otherwise, refer all PWR claims or complaints to the PWR Screener.

VII. FARM/FOREST LABOR CLAIMS AND COMPLAINTS

1. Screener will determine if the claim is from a person engaged in activities related to farm/forest labor.
2. Screener will transfer the claim to the compliance manager of the Farm Labor Unit in the Salem office to determine whether the worker is a seasonal or migrant worker.
3. **These claims will be treated as priority claims.**

VIII. WAGE COLLECTION CLAIMS/EVIDENCE REVIEW/PARTIAL PAYMENT/ PRIORITY MINIMUM WAGE AND OVERTIME

When the regular screening process is complete, give the claim to the Intake Unit to send a Notice of Claim (demand letter). The demand letter requires that the employer respond with ten (10) days, either by submitting the amount due as claimed or by providing documentation as to why the employer disputes the claim. Depending on the nature of the claim, the employer's response, and the processing office, most claims will be returned to the screener for a final review. (See below.)

1. If the claimant has not provided adequate evidence to support his or her claim and there is no employer response:
 - a. Prepare the "Request for Evidence" (WH-5 or WH-5S) letter. Response time for the claimant should be ten (10) business days.
 - b. With the WH-5 letter, enclose the 'Examples of Evidence' checklist (WH-207 or WH-207S) from the wage claim form and a self-addressed envelope with ATTN: (name of person it should be returned to).
 - c. Copy the letter and insert it into the file. Complete data entry. Hold the file until the claimant responds or until ten (10) days for response has expired.
 - d. If the claimant fails to respond, close the claim for insufficient evidence (closure code 2). Complete data entry for closure.
 - e. For evidence returned to the Salem or Eugene offices, field office staff will forward the documents to Intake in the Portland office.

- f. If claimant provides additional evidence, evaluate it, and, if it is adequate, complete the data entry and route the file to Intake, which will keep the file pending assignment to a compliance specialist.
2. If the claimant has not provided adequate evidence to support his or her claim and the employer has responded, review the employer's response.
 - a. If the employer admits to owing the claimant wages, or has obviously misinterpreted the law, complete data entry and route the file to Intake to hold for assignment.
 - b. If the employer disputes the claim and it sounds reasonable, follow the guidelines above for sending out the lack of evidence letter. Complete data entry and hold the file in the screener's area pending response from claimant.
 3. If the claimant provides evidence to support his or her claim, Intake will complete data entry to show that the employer has responded and hold the file pending assignment to a compliance specialist.
 4. If the employer responds with evidence showing full payment to the employee, call the employee to verify whether or not the employee received the payment. Document the employee's response on a contact sheet (WH-92). If the employee was paid in full, document the information and close the claim. If the employee did not receive full payment, document the information on the contact sheet and return the claim to Intake to hold pending assignment to a compliance specialist.
 5. If the employer response includes a check for partial payment of amount of the claim, Intake should route the file to the Screener, who will call the claimant to see if the claimant wishes to accept or reject the partial payment. If the claimant chooses to accept the partial payment, the Screener will route the file back to Intake to send the closure letter and mail the check. If the claimant does not wish to accept the partial payment, the claim will be flagged as a priority assignment by the Screener ("Priority/Partial Payment") and given to Intake to be placed in the Pending Assignment drawer for assignment. Intake will attach a copy of the employer's partial check from the Fiscal Unit to the employer section in the file with a note to the compliance specialist requesting he or she provide Intake with check handling instructions.

If the Screener has indicated that the claim is for overtime that is close to the two-year statute of limitations, the Screener will code the claim "Priority/OT-Clock Running," mark the file on the top of the route slip "OT/Clock Running," and route the file to Intake for the demand letter. After the response time has elapsed, Intake will place the file in the front of the Pending Assignment drawer for assignment.

IX. CLAIM CLOSURE PROCEDURE

There are several instances when claims are closed at the screening stage. Generally, refer to the list of closure codes (see attached) and use the established closure language. The following are claims to be closed in the screening process (with the appropriate closure code in parentheses):

1. Claims/complaints filed after one of the following, unless minimum wage or overtime is involved:

- a. One year has elapsed from the point in time the alleged violation first occurred; (27)
OR
 - b. Six months have elapsed from the employee's date of termination. (28)
2. Claims alleging non-payment of compensation "in-kind" (payment in things other than cash or negotiable instrument) unless minimum wage or overtime is involved. (32)
 3. Claims alleging that over \$10,000 is owed to the claimant, unless minimum wage or overtime is involved. (34)
 4. Claims alleging non-payment of commissions only, unless minimum wage is involved. (18)
 5. Claims alleging multiple piece-rates, providing:
 - a. Claimant is engaged as a truck driver or driver's helper, unless minimum wage is involved (33)
OR
 - b. Claimant has not maintained simultaneous piece-rate records, unless minimum wage or overtime is involved (33)
 6. Claims where claimant/complainant does not complete the required BOLI forms establishing an allegation of an unlawful wage practice; i.e., the factual or evidentiary details of the claim. (02)
 7. Claims from employees alleging failure to pay contractual compensatory time. (31)
 8. Other closures as indicated on the claim form or determined during the screening process; i.e. business partners (14); penalty wages only (19); expenses only (21); claimant requests closure (78); etc.

NOTE: The above list does not pertain to PWR or WSF cases.

When closing a file:

1. Complete the data entry (see IMPACT Manual).
2. Place a copy of the closure letter on top of the screener checklist.
3. Place a copy of the WH-60 on top of the back file cover (employer) information.
4. Complete the Case Diary Sheet.
5. Complete the file route slip and insert it into the file folder.
6. File the closed claim in the appropriate area.

X. THE COMPLAINT PROCEDURE

Complaints or letters that come in without a claim are given directly to the screener to process. Screeners will complete setup and data entry for the complaint as follows:

1. Perform business name search from the Corporation Division using the Oregon Secretary of State's website.
2. Complete data entry (includes preparing and printing the complaint warning letter) and close using the code 47 - Closed - Warning Letter sent.

3. Write the case number and the correct WH-(letter) on the complaint.
4. Copy the letter(s) and attach to the complaint with a paperclip. Do not staple the documents. Complaint file should be in the following order from top:
 - a. Complaint warning letter:
 - b. Original complaint:
 - c. Other claimant information:
 - d. Copy of Corporation Division business registration.
5. File the completed complaint to be scanned by business name in the appropriate area.

Complaints involving child labor issues, farm/forest labor contractors, or prevailing wage rates are priorities.

CHILD LABOR:

1. If a complaint alleges that minors are subject to hazardous working conditions - route or copy the complaint to the Operations Support Manager for further direction.
2. If no hazardous working conditions are alleged in the complaint, then follow the complaint procedure outlined above.

FARM/FOREST LABOR CONTRACTORS

1. If the complaint is made by telephone, refer the caller to the Farm Labor Unit in the Salem office, or, if that is not possible, take as much information as possible from the caller and e-mail the information to the Compliance Manager in the Salem office.
2. Refer all written complaints related to farm/forest labor contractors to the Compliance Manager in the Salem office.
3. Data entry is completed by the FLU Unit and the Compliance Manager is responsible for making assignments and providing instructions concerning these complaints.

PREVAILING WAGE RATE

Unless instructed otherwise, refer PWR complaints to the PWR screener in the Portland office.

Bureau of Labor and Industries

Uncollected Judgments

March 10, 2017

Amounts Owed to Employees

Unpaid Wages and Penalties Owed to Employees: \$10,872,008.17

Amounts Owed to BOLI

Unpaid Civil Penalties \$5,007,736.40*

Unpaid Court Fees: \$170,166.44

Wage Security Fund Recoveries and Penalties: \$1,688,116.62

Total Unpaid Amounts Owed to BOLI: \$6,866,019.46

*Only some portion of this amount would be retained upon collection by BOLI for its costs; the balance is generally payable to the General or Common School Fund