

# Senate Bill 999

Sponsored by COMMITTEE ON VETERANS AND EMERGENCY PREPAREDNESS

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

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

## A BILL FOR AN ACT

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

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

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

6 652.020. (1) No person shall be employed in any mill, factory or manufacturing establishment in  
7 this state more than 10 hours in any one day, or in sawmills, planing mills, shingle mills and logging  
8 camps more than eight hours, exclusive of one hour, more or less, in one day or more than 48 hours  
9 in one calendar week, except logging train crews, guards, boiler operators and persons engaged in  
10 the transportation to and from work, and employees when engaged in making necessary repairs, or  
11 in the case of emergency where life and property are in imminent danger. However, employees may  
12 work overtime not to exceed three hours in one day, conditioned that payment be made for said  
13 overtime at the rate of time and one-half the regular wage.

14 (2) No employer shall require or permit any person to work in any place mentioned in this  
15 section more than the hours provided for in this section during any day of 24 hours. No employer  
16 shall permit or suffer an overseer, superintendent or other agent of the employer to violate this  
17 section.

18 (3) This section does not apply to persons employed in the care of quarters or livestock, con-  
19 ducting [*messhalls*] **mess halls**, superintendence and direction of work, or to the loading and re-  
20 moval of the finished forest product.

21 (4) Subsections (1) and (2) of this section do not apply to employees who are represented by a  
22 labor organization for purposes of collective bargaining with their employer, provided limits on the  
23 required hours of work and overtime payment have been agreed to between the employer and labor  
24 organization, or if no agreement is reached, then, for the purposes of this subsection, such limits and  
25 payments shall not be deemed to be changed from the previous collective bargaining agreement be-  
26 tween the employer and labor organization unless the employees have been locked out, are engaged  
27 in a strike or the employer has unilaterally implemented new terms and conditions of employment.

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

30 **(6) An employee who claims the employer violated this section during the employee's**

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

1 **employment with the employer does not have a claim under ORS 652.140 for the alleged vio-**  
 2 **lation of this section if the employer did not remedy the violation prior to the employee's**  
 3 **separation from employment.**

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

5 652.120. (1) Every employer shall establish and maintain a regular payday, at which date the  
 6 employer shall pay all employees the wages due and owing to them.

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

9 (3) This section does not prevent the employer from establishing and maintaining paydays at  
 10 more frequent intervals.

11 (4) This section does not prevent any employer from entering into a written agreement, prior to  
 12 the rendering of any services, and mutually satisfactory with the employer's employees, as to the  
 13 payment of wages at a future date.

14 (5) When an employer has notice that an employee has not been paid the full amount the em-  
 15 ployee is owed on a regular payday and there is no dispute between the employer and the employee  
 16 regarding the amount of the unpaid wages:

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

20 (b) If the unpaid amount is five percent or more of the employee's gross wages due on the reg-  
 21 ular payday, the employer shall pay the employee the unpaid amount within three days after the  
 22 employer has notice of the unpaid amount, excluding Saturdays, Sundays and holidays.

23 **(6) A remedy provided under this section may not be enforced simultaneously or con-**  
 24 **secutively with another remedy for the same or a substantially similar alleged violation.**

25 **(7) An employee who claims the employer violated this section during the employee's**  
 26 **employment with the employer does not have a claim under ORS 652.140 for the alleged vio-**  
 27 **lation of this section if the employer did not remedy the violation prior to the employee's**  
 28 **separation from employment.**

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

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

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

37 (b) A penalty may not be assessed under this section when an employer pays an employee the  
 38 wages the employer estimates are due and payable under ORS 652.140 (2)(c) and the estimated  
 39 amount of wages paid is less than the actual amount of earned and unpaid wages, as long as the  
 40 employer pays the employee all wages earned and unpaid within five days after the employee sub-  
 41 mits the time records.

42 (2)(a) If the employee or a person on behalf of the employee submits a written notice of non-  
 43 payment, the penalty may not exceed 100 percent of the employee's unpaid wages or compensation  
 44 unless the employer fails to pay the full amount of the employee's unpaid wages or compensation  
 45 within 12 days after receiving the notice.

1 (b) If the employee or a person on behalf of the employee fails to submit a written notice of  
 2 nonpayment, the penalty may not exceed 100 percent of the employee's unpaid wages or compen-  
 3 sation.

4 (c) A written notice of nonpayment must include the estimated amount of wages or compensation  
 5 alleged to be owed or an allegation of facts sufficient to estimate the amount owed. Submission of  
 6 a written notice of nonpayment that fails to include the estimated amount of wages or compensation  
 7 alleged to be owed or an allegation of facts sufficient to estimate the amount owed does not satisfy  
 8 the requirement for written notice under this subsection unless the employer has violated ORS  
 9 652.610, 652.640 or 653.045.

10 (d) For purposes of determining when an employer has paid wages or compensation under this  
 11 subsection, payment occurs on the date the employer delivers the payment to the employee or sends  
 12 the payment by first class mail, express mail or courier service.

13 (3)(a) For purposes of this section, a commission owed to an employee by a business that pri-  
 14 marily sells motor vehicles or farm implements is not due until all of the terms and conditions of  
 15 an agreement between the employer and employee concerning the method of payment of commissions  
 16 are fulfilled. If no such agreement exists, the commission is due with all other earned and unpaid  
 17 wages or compensation as provided in ORS 652.140.

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

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

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

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

30 (5) The employer may avoid liability for the penalty described in this section by showing finan-  
 31 cial inability to pay the wages or compensation at the time the wages or compensation accrued.

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

33 652.615. (1) There is hereby created a private cause of action for a violation of ORS 652.610 (3)  
 34 for actual damages or \$200, whichever is greater. In any such action the court may award to the  
 35 prevailing party, in addition to costs and disbursements, reasonable attorney fees.

36 (2) **A remedy provided under this section may not be enforced simultaneously or con-**  
 37 **secutively with another remedy for the same or a substantially similar alleged violation.**

38 (3) **An employee who claims the employer violated this section during the employee's**  
 39 **employment with the employer does not have a claim under ORS 652.140 for the alleged vio-**  
 40 **lation of this section if the employer did not remedy the violation prior to the employee's**  
 41 **separation from employment.**

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

43 653.055. (1) Any employer who pays an employee less than the wages to which the employee is  
 44 entitled under ORS 653.010 to 653.261 is liable to the employee affected:

45 (a) For the full amount of the wages, less any amount actually paid to the employee by the

1 employer; and

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

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

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

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

18 (5) **A remedy provided under this section may not be enforced simultaneously or con-**  
 19 **secutively with another remedy for the same or a substantially similar alleged violation.**

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

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

25 653.261. (1) The Commissioner of the Bureau of Labor and Industries may adopt rules prescrib-  
 26 ing such minimum conditions of employment, excluding minimum wages, in any occupation as may  
 27 be necessary for the preservation of the health of employees. The rules may include, but are not  
 28 limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than  
 29 eight hours per day or 40 hours per week; however, after 40 hours of work in one week overtime  
 30 may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of  
 31 the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

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

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

41 (4) Rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal  
 42 periods and rest periods do not apply to nurses who provide acute care in hospital settings if pro-  
 43 visions of collective bargaining agreements entered into by the nurses prescribe rules concerning  
 44 meal periods and rest periods.

45 (5)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food

1 or beverages, receive tips and report the tips to the employer.

2 (b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commis-  
3 sioner shall permit an employee to waive a meal period. However, an employer may not coerce an  
4 employee into waiving a meal period.

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

11 (d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS  
12 183.745. All sums collected as penalties under this subsection shall be applied and paid over as  
13 provided in ORS 653.256 (4).

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

17 (f) **An employee who claims the employer violated this subsection during the employee's**  
18 **employment with the employer does not have a claim under ORS 652.140 for the alleged vio-**  
19 **lation of this subsection if the employer did not remedy the violation prior to the employee's**  
20 **separation from employment.**

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