

# House Bill 2223

Sponsored by Representative BARRETO (Presession filed.)

## SUMMARY

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

Prohibits assessment of penalty wage as remedy for allegation of certain wage and hour violations if employer did not remedy violation prior to employee's separation from employment.

## A BILL FOR AN ACT

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

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

5 **SECTION 1.** ORS 652.150 is amended to read:

6 652.150. (1) Except as provided in subsections (2) and (3) of this section, if an employer willfully  
7 fails to pay any wages or compensation of any employee whose employment ceases, as provided in  
8 ORS 652.140 and 652.145, then, as a penalty for the nonpayment, the wages or compensation of the  
9 employee shall continue from the due date thereof at the same hourly rate for eight hours per day  
10 until paid or until action therefor is commenced. However:

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

13 (b) A penalty may not be assessed under this section:

14 (A) When an employer pays an employee the wages the employer estimates are due and payable  
15 under ORS 652.140 (2)(c) and the estimated amount of wages paid is less than the actual amount of  
16 earned and unpaid wages, as long as the employer pays the employee all wages earned and unpaid  
17 within five days after the employee submits the time records[.]; **or**

18 **(B) For an employee's claim alleging a violation of ORS 652.020, 652.120, 652.610, 653.055**  
19 **or 653.261 that occurred during the employee's employment with the employer, if the em-**  
20 **ployer did not remedy the violation prior to the employee's separation from employment.**

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

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

28 (c) A written notice of nonpayment must include the estimated amount of wages or compensation  
29 alleged to be owed or an allegation of facts sufficient to estimate the amount owed. Submission of  
30 a written notice of nonpayment that fails to include the estimated amount of wages or compensation  
31 alleged to be owed or an allegation of facts sufficient to estimate the amount owed does not satisfy

**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 the requirement for written notice under this subsection unless the employer has violated ORS  
 2 652.610, 652.640 or 653.045.

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

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

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

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

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

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

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

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

26 653.055. (1) Any employer who pays an employee less than the wages to which the employee is  
 27 entitled under ORS 653.010 to 653.261 is liable to the employee affected:

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

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

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

34 (3) The Commissioner of the Bureau of Labor and Industries has the same powers and duties in  
 35 connection with a wage claim based on ORS 653.010 to 653.261 as the commissioner has under ORS  
 36 652.310 to 652.445 and in addition the commissioner may, without the necessity of assignments of  
 37 wage claims from employees, initiate suits against employers to enjoin future failures to pay re-  
 38 quired minimum wages or overtime pay and to require the payment of minimum wages and overtime  
 39 pay due employees but not paid as of the time of the filing of suit. The commissioner may join in a  
 40 single proceeding and in one cause of suit any number of wage claims against the same employer.  
 41 If the commissioner does not prevail in such action, the commissioner shall pay all costs and dis-  
 42 bursements from the Bureau of Labor and Industries Account.

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