

# House Bill 4087

Sponsored by Representative FAHEY; Representatives ALONSO LEON, HERNANDEZ, HOLVEY, KENY-GUYER, LIVELY, MEEK, MITCHELL, NOSSE, REARDON, SANCHEZ, WILDE, WILLIAMS, WITT (Pre-session 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**.

Directs portion of remainder of moneys collected from employers as civil penalties for violations of certain employment laws to be credited to Bureau of Labor and Industries Account to provide technical assistance to employers.

Directs portion of remainder of moneys collected from employers as civil penalties for violations of certain employment laws to be credited to Wage Security Fund.

Allows payment from Wage Security Fund to be made to wage claimant for wages earned and unpaid in event that Commissioner of Bureau of Labor and Industries has obtained judgment in action or has issued final order in administrative proceeding for collection of wage claim.

Requires Bureau of Labor and Industries to study provisions of state law relating to employee rights and protections. Directs bureau to submit to interim committees of Legislative Assembly related to business and labor, by September 15, 2022, report that includes results of study, including any recommended legislative changes, and describes how moneys credited to Bureau of Labor and Industries Account were spent on providing technical assistance to employers. Sunsets provisions on January 1, 2023.

## A BILL FOR AN ACT

1  
2 Relating to employment; creating new provisions; and amending ORS 652.414, 653.256 and 653.370.

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

4 **SECTION 1.** ORS 653.256 is amended to read:

5 653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
6 of Labor and Industries may assess a civil penalty not to exceed \$1,000 against any person that  
7 willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060, 653.261, 653.265, 653.606, 653.611,  
8 653.616, 653.621, 653.626, 653.631 or 653.636 or section 5, chapter 537, Oregon Laws 2015, or any rule  
9 adopted thereunder.

10 (2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty  
11 not to exceed \$1,000 against any person that intentionally violates ORS 653.077 or any rule adopted  
12 thereunder.

13 (3) Civil penalties authorized by this section shall be imposed in the manner provided in ORS  
14 183.745.

15 (4)(a) All sums collected as penalties under this section shall be first applied toward reimburse-  
16 ment of costs incurred in determining the violations, conducting hearings under this section and  
17 addressing and collecting the penalties.

18 (b) The remainder, if any, of the sums collected as penalties under subsection (1) of this section  
19 shall be paid over by the commissioner [*to the Department of State Lands for the benefit of the Com-*  
20 *mon School Fund of this state. The department shall issue a receipt for the money to the*  
21 *commissioner.*] **as follows:**

22 **(A) Fifty percent of the remainder of the moneys shall be credited and paid into the Bu-**  
23 **reau of Labor and Industries Account under ORS 651.160 for the purpose of providing tech-**  
24 **nicol assistance to employers; and**

**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       **(B) Fifty percent of the remainder of the moneys shall be paid into the State Treasury**  
 2       **and credited to the Wage Security Fund under ORS 652.409.**

3       (c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section  
 4 shall be paid over by the commissioner [*to the Department of Human Services for the benefit of the*  
 5 *Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys*  
 6 *to the commissioner.*] **as follows:**

7       **(A) Fifty percent of the remainder of the moneys shall be credited and paid into the Bu-**  
 8 **reau of Labor and Industries Account under ORS 651.160 for the purpose of providing tech-**  
 9 **anical assistance to employers; and**

10       **(B) Fifty percent of the remainder of the moneys shall be paid into the State Treasury**  
 11 **and credited to the Wage Security Fund under ORS 652.409.**

12       **SECTION 2.** ORS 653.370 is amended to read:

13       653.370. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau  
 14 of Labor and Industries may impose upon any person who violates ORS 653.305 to 653.370, or any  
 15 rule adopted by the Bureau of Labor and Industries under ORS 653.305 to 653.370 or 653.400, a civil  
 16 penalty not to exceed \$1,000 for each violation.

17       (2) Notwithstanding ORS 183.482, any petition for review of an order imposing a civil penalty  
 18 under this section must be filed within 30 days following the date the order upon which the petition  
 19 is based is served.

20       (3) Except as otherwise provided in this section, civil penalties under this section shall be im-  
 21 posed as provided in ORS 183.745.

22       (4) All sums collected as penalties pursuant to this section shall be first applied toward re-  
 23 imbursement of the costs incurred in determining the violations, conducting hearings under this  
 24 section and assessing and collecting such penalties. The remainder, if any, of the sums collected as  
 25 penalties pursuant to this section shall be paid over by the commissioner [*to the Department of State*  
 26 *Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt*  
 27 *for the money to the commissioner.*] **as follows:**

28       **(a) Fifty percent of the remainder of the moneys shall be credited and paid into the Bu-**  
 29 **reau of Labor and Industries Account under ORS 651.160 for the purpose of providing tech-**  
 30 **anical assistance to employers; and**

31       **(b) Fifty percent of the remainder of the moneys shall be paid into the State Treasury**  
 32 **and credited to the Wage Security Fund under ORS 652.409.**

33       (5)(a) Notwithstanding subsection (1) of this section, the commissioner may not impose a civil  
 34 penalty pursuant to this section upon any person who provides evidence satisfactory to the com-  
 35 missioner that:

36       (A) The person has paid a civil penalty to the United States Department of Labor for violation  
 37 of the child labor provisions of the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

38       (B) The civil penalty involved the same factual circumstances at issue before the commissioner.

39       (b) Notwithstanding subsection (1) of this section, the commissioner shall refund any civil pen-  
 40 alty previously imposed on and collected from any person pursuant to this section if the person  
 41 provides evidence satisfactory to the commissioner that:

42       (A) The person has paid a civil penalty to the United States Department of Labor for violation  
 43 of the child labor provisions of the federal Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

44       (B) The civil penalty involved the same factual circumstances underlying the commissioner's  
 45 imposition of a civil penalty.

1       **SECTION 3.** ORS 652.414 is amended to read:

2       652.414. Notwithstanding any other provision of law:

3       (1) When an employee files a wage claim under this chapter for wages earned and unpaid[,] and  
4 the Commissioner of the Bureau of Labor and Industries:

5       (a) Determines that the employer against whom the claim was filed has ceased doing business  
6 and is without sufficient assets to pay the wage claim and the wage claim cannot otherwise be fully  
7 and promptly paid, the commissioner, after determining that the claim is valid, shall pay the claim-  
8 ant, to the extent provided in subsection (2) of this section:

9       [(a)] (A) The unpaid amount of wages earned within 60 days before the date of the cessation of  
10 business; or

11       [(b)] (B) If the claimant filed a wage claim before the cessation of business, the unpaid amount  
12 of wages earned within 60 days before the last day the claimant was employed[.]; or

13       **(b) Obtains a judgment or issues a final order, including an order of determination that**  
14 **has become final, under ORS 652.332 on the wage claim, the commissioner shall pay the**  
15 **claimant, to the extent provided in subsection (2) of this section, the amount of wages due**  
16 **pursuant to the judgment or the final order.**

17       (2) The commissioner shall pay the unpaid amount of wages earned as provided in subsection (1)  
18 of this section only to the extent of \$10,000 from such funds as may be available pursuant to ORS  
19 652.409 (2).

20       (3) The commissioner may commence an appropriate action, suit or proceeding to recover from  
21 the employer, or other persons or property liable for the unpaid wages, amounts paid from the Wage  
22 Security Fund under subsection (1) of this section. In addition to costs and disbursements, the com-  
23 missioner is entitled to recover reasonable attorney fees at trial and on appeal, together with a  
24 penalty of 25 percent of the amount of wages paid from the Wage Security Fund or \$200, whichever  
25 amount is the greater. All amounts recovered by the commissioner under this subsection and sub-  
26 section (4) of this section are appropriated continuously to the commissioner to carry out the pro-  
27 visions of this section.

28       (4) The commissioner has a lien on the personal property of the employer for the benefit of the  
29 fund when the claim is paid under subsection (1) of this section for the amount so paid and the  
30 penalty referred to in subsection (3) of this section. The commissioner may cause to be filed a veri-  
31 fied written notice of claim of lien with the recording officer of the county in which the employer  
32 has its principal place of business no later than 30 days after the date the claim was paid under  
33 subsection (1) of this section. The notice of claim of lien shall contain:

34       (a) A true statement of the sums paid to wage claimants and the amount of the penalty provided  
35 for in subsection (3) of this section;

36       (b) The name of the owner of the personal property to be charged with the lien;

37       (c) A description of the personal property to be charged with the lien sufficient for identifica-  
38 tion. If a lien is being claimed against all personal property of the employer, the description is suf-  
39 ficient if it states that all personal property of the employer is covered; and

40       (d) The date the wage claim was paid.

41       (5) Liens created by subsection (4) of this section shall be recorded in the same manner as pro-  
42 vided for in ORS 87.246 and may be foreclosed in the manner provided for in ORS 87.262.

43       (6) Liens created by subsection (4) of this section shall have priority over any other liens or  
44 security interests perfected after the date the notice of claim is filed with the county recording of-  
45 ficer under subsections (4) and (5) of this section.

1 (7) The commissioner shall promulgate rules to carry out the provisions of this section that in-  
2 clude, but are not limited to, prescribing procedures for a timely and cost efficient method for the  
3 payment of wage claims from the Wage Security Fund and procedures for prorating wage claims if  
4 insufficient funds are available for payment.

5 (8) Nothing in this section is intended to require the commissioner to pay wage claims for which  
6 moneys are not available under ORS 652.409 (2).

7 **SECTION 4. The Bureau of Labor and Industries shall conduct a study of provisions of**  
8 **state law relating to employee rights and protections. The bureau shall:**

9 (1) **Identify existing statutes that impose penalties, including fines and civil penalties,**  
10 **against employers who violate or fail to comply with statutory requirements concerning**  
11 **employee rights, including, but not limited to, the right to meal periods and rest periods**  
12 **under ORS 653.261; and**

13 (2) **Explore options and recommend legislative changes to provide a means, through civil**  
14 **action or otherwise, by which an employee may be compensated for any loss or harm due to**  
15 **an employer's failure to comply with any statutory requirements relating to employee rights**  
16 **and protections.**

17 **SECTION 5. No later than September 15, 2022, the Commissioner of the Bureau of Labor**  
18 **and Industries shall submit a report, in the manner provided in ORS 192.245, to the interim**  
19 **committees of the Legislative Assembly relating to business and labor that:**

20 (1) **Describes how the moneys credited to the Bureau of Labor and Industries Account**  
21 **under ORS 653.256 and 653.370 were spent on providing technical assistance to employers; and**

22 (2) **Includes the results of the study conducted under section 4 of this 2020 Act along with**  
23 **any recommended legislative changes.**

24 **SECTION 6. Sections 4 and 5 of this 2020 Act are repealed on January 1, 2023.**

25