

DRAFT

SUMMARY

Requires Oregon Health Authority to issue temporary staffing agency license to qualified applicant. Defines “temporary staffing agency.” Prohibits unlicensed operation of temporary staffing agency. Directs authority to adopt rules regulating temporary staffing agencies. Establishes maximum rate temporary staffing agency may charge for services. Exempts temporary staffing agency from regulation by Bureau of Labor and Industries. Imposes civil penalties and allows private right of action for specified violations.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to health care temporary staffing agencies; creating new provisions; amending ORS 658.015; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 6 of this 2022 Act:

(1) “Personnel” means health care workers.

(2) “Rate” means the total amount that a temporary staffing agency charges to or receives from a person that engages the temporary staffing agency to assign personnel to the person on a temporary basis.

(3)(a) “Temporary staffing agency” means an entity that operates in this state for the purpose of providing temporary work to personnel providing health care services for or on behalf of persons that engage the temporary staffing agency.

(b) “Temporary staffing agency” does not include:

(A) A personnel staff arrangement established by an entity solely for the entity’s own use and in which the only costs are salaries paid to personnel;

1 (B) An individual who provides the individual's services on a tem-
2 porary basis; or

3 (C) An employment agency as defined in ORS 658.005.

4 **SECTION 2.** (1) The Oregon Health Authority shall issue a tempo-
5 rary staffing agency license to an applicant that submits to the au-
6 thority:

7 (a) An application that includes the names and addresses of the
8 applicant's officers and directors and any other person that has own-
9 ership, partnership or a similar interest in the applicant;

10 (b) For the purposes of conducting a state or nationwide criminal
11 records check under ORS 181A.195, the fingerprints of all individuals
12 described in paragraph (a) of this subsection;

13 (c) Copies of the applicant's organizational documents, including
14 but not limited to articles of incorporation and other relevant filings;

15 (d) Any other information requested by the authority; and

16 (e) A licensure fee.

17 (2) A license issued under this section is valid for one year and may
18 be renewed. In order to renew a license issued under this section, a
19 temporary staffing agency shall submit to the authority a renewal
20 application that includes:

21 (a) Any changes to the information described in subsection (1)(a)
22 or (c) of this section;

23 (b) Any other information requested by the authority; and

24 (c) A renewal fee.

25 (3) Every two years after the issuance of a license under subsection
26 (1) of this section, as a condition of license renewal, the authority
27 shall require a temporary staffing agency to provide to the authority
28 the fingerprints described in subsection (1)(b) of this section for the
29 purpose of conducting updated state and national criminal records
30 checks under ORS 181A.195.

31 **SECTION 3.** The Oregon Health Authority shall publish and main-

tain on a publicly available website operated by or on behalf of the authority a list of temporary staffing agencies licensed under section 2 of this 2022 Act.

SECTION 4. (1) A temporary staffing agency may not operate in this state without a license issued or renewed under section 2 of this 2022 Act.

(2) Each separate physical location of a temporary staffing agency must obtain a license under section 2 of this 2022 Act.

SECTION 5. (1) A temporary staffing agency licensed under section 2 of this 2022 Act shall:

(a) Ensure all personnel for which the temporary staffing agency procures or provides temporary employment meet any professional authorization requirements established for the practice or performance of the services provided by the personnel.

(b) Assign personnel to settings for which the personnel have the appropriate work experience and background to provide the services required by the specific setting.

(c) Retain records for at least 10 years in a manner that makes the records immediately available to the Oregon Health Authority upon request of the authority.

(d) Meet any other requirements established by the authority by rule.

(2) Except as provided in section 6 of this 2022 Act, a temporary staffing agency licensed under section 2 of this 2022 Act may not charge to or receive from a person that engages the temporary staffing agency a rate greater than the rate established by the authority under section 6 of this 2022 Act.

SECTION 6. (1)(a) The Oregon Health Authority shall adopt rules to establish maximum rates that a temporary staffing agency licensed under section 2 of this 2022 Act may charge to or receive from an entity that engages the temporary staffing agency. In adopting rules

1 under this paragraph, the authority shall consider at least industry
2 standard personnel hourly wages and relevant geographic factors.

3 (b) The authority may establish more than one rate under this
4 subsection. The differences in rates may be based on factors including
5 but not limited to geographic regions of this state, personnel education
6 and qualification and settings.

7 (c) The authority shall establish criteria under which a temporary
8 staffing agency may apply to the authority to use a rate higher than
9 the rates established under this subsection.

10 (2)(a) The authority shall adopt by rule lists of provisions that an
11 agreement between a temporary staffing agency licensed under section
12 2 of this 2022 Act and a person that engages the temporary staffing
13 agency:

14 (A) Must include; and

15 (B) May not include.

16 (b) The authority may adopt a template agreement that a tempo-
17 rary staffing agency may, but is not required to, use.

18 (3) The authority may adopt other rules as necessary to carry out
19 sections 1 to 6 of this 2022 Act.

20 SECTION 7. (1)(a) The Oregon Health Authority may impose on a
21 temporary staffing agency, as defined in section 1 of this 2022 Act, a
22 civil penalty not to exceed \$500 per day per violation of section 2, 4 or
23 5 of this 2022 Act or rules adopted under section 6 of this 2022 Act. The
24 authority shall consider as a separate violation each assignment of an
25 individual personnel member in violation of section 5 (1) of this 2022
26 Act.

27 (b) Moneys from civil penalties imposed under this section shall be
28 deposited in the State Treasury and credited to an account designated
29 by the authority. The moneys described in this subsection are contin-
30 uously appropriated to the authority for the administration of sections
31 1 to 6 of this 2022 Act.

(2) A person that engages a temporary staffing agency or an individual who is a personnel member has a private right of action against a temporary staffing agency for damages arising from the temporary staffing agency's violation of section 2, 4 or 5 of this 2022 Act or rules adopted under section 6 of this 2022 Act.

(3) As used in this section, "personnel" has the meaning given that term in section 1 of this 2022 Act.

SECTION 8. ORS 658.015 is amended to read:

658.015. (1) ORS 658.005 to 658.245 do not apply to:

(a) Labor contractors subject to ORS 658.405 to 658.511; or

(b) A temporary staffing agency as defined in section 1 of this 2022 Act.

(2) ORS 658.005 to 658.245 do not apply to any nonprofit organization or corporation organized for the purpose of economic adjustment, civic betterment and the giving of professional guidance and placement to its members, when all of the following requirements are met:

(a) None of its directors, officers or employees are deriving any profit beyond a nominal salary for services performed on its behalf.

(b) Membership dues and fees are used solely for the maintenance of the organization or corporation.

(c) No fee is charged for employment services.

(d) On request of the Commissioner of the Bureau of Labor and Industries, the organization or corporation files with the commissioner, on or before the first day of April of each year, a copy of its constitution or articles of incorporation and its bylaws, together with a sworn statement setting forth its place of business; the names and addresses of its officers, directors and employees, the salaries they receive and the services they actually perform; and the various benefits furnished to its members.

(3) As used in subsection (2) of this section:

(a) "Civic betterment" means the promotion of the common good and general welfare of the people of this state or any political subdivision

therein.

(b) “Economic adjustment” means the promotion of a program by which individuals are helped to acquire new professional skills, add to their existing professional skills or change their type of profession.

(4) ORS 658.005 to 658.245 do not apply to a bona fide labor organization of workers or a nonprofit organization or corporation that has been formed in good faith for the regulation, promotion and advancement of the general professional interests of its members and that incidentally maintains a placement service principally engaged in securing employment for such members.

SECTION 9. A temporary staffing agency may not charge to or receive from a person that engages the temporary staffing agency to assign health care workers to the person for work on a temporary basis an amount 15 percent or more higher than the total amount the temporary staffing agency charged to or received from the person, or similarly situated person, as of January 1, 2021.

SECTION 10. Section 9 of this 2022 Act is repealed on January 2, 2023.

SECTION 11. (1) Sections 1 to 7 of this 2022 Act and the amendments to ORS 658.015 by section 8 of this 2022 Act become operative on January 1, 2023.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by sections 1 to 7 of this 2022 Act and the amendments to ORS 658.015 by section 8 of this 2022 Act.

SECTION 12. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

