

Enrolled
House Bill 2818

Sponsored by Representative FAHEY; Representatives ALONSO LEON, DEXTER, HAYDEN, REARDON, WILDE, WILLIAMS, WITT, Senator HANSELL (Presession filed.)

CHAPTER

AN ACT

Relating to employment; creating new provisions; amending ORS 652.210 and 652.414; and declaring an emergency.

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

SECTION 1. ORS 652.414 is amended to read:

652.414. Notwithstanding any other provision of law:

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

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

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

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

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

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

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

(4) The commissioner has a lien on the personal property of the employer for the benefit of the fund when the claim is paid under subsection (1) of this section for the amount so paid and the penalty referred to in subsection (3) of this section. The commissioner may cause to be filed a ver-

ified written notice of claim of lien with the recording officer of the county in which the employer has its principal place of business no later than 30 days after the date the claim was paid under subsection (1) of this section. The notice of claim of lien shall contain:

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

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

(c) A description of the personal property to be charged with the lien sufficient for identification. If a lien is being claimed against all personal property of the employer, the description is sufficient if it states that all personal property of the employer is covered; and

(d) The date the wage claim was paid.

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

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

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

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

SECTION 2. ORS 652.210 is amended to read:

652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

(1)(a) "Compensation" includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

(b) "Compensation" does not include vaccine incentives.

(2) "Employee" means any individual who, otherwise than as a copartner of the employer, as an independent contractor or as a participant in a work training program administered under the state or federal assistance laws, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only partly in this state, an individual is not an employee unless the contract of employment of the employee has been entered into, or payments thereunder are ordinarily made or to be made, within this state.

(3)(a) "Employer" means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(b) "Employer" does not include the federal government.

(4) "Equal-pay analysis" means an evaluation process to assess and correct wage disparities among employees who perform work of comparable character.

(5) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

(6) "Public health emergency" means:

(a) A public health emergency declared under ORS 433.441.

(b) An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

[(6)] (7) "Rate" with reference to wages means:

(a) The basis of compensation for services by an employee for an employer; and

(b) Compensation based on the time spent in the performance of the services, on the number of operations accomplished or on the quantity produced or handled.

[(7)] (8) "Sexual orientation" has the meaning given that term in ORS 174.100.

[(8)] (9) "System" means a consistent and verifiable method in use at the time that a violation is alleged under ORS 652.220.

[(9)] (10) “Unpaid wages” means the difference between the wages actually paid to an employee and the wages required under ORS 652.220 to be paid to the employee.

(11) **“Vaccine incentives” means monetary or nonmonetary incentives, including but not limited to additional paid time off or protected time off from work provided by employers to employees who have been immunized against infectious diseases for which a public health emergency has been declared.**

[(10)] (12) “Veteran status” means an individual is a veteran as defined in ORS 408.225.

[(11)] (13) “Wages” means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, or paid in cash or any medium other than cash.

[(12)] (14) “Working conditions” includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee.

[(13)] (15) “Work of comparable character” means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title.

SECTION 3. ORS 652.210, as amended by section 2 of this 2021 Act, is amended to read:

652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

(1)(a) “Compensation” includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

(b) “Compensation” does not include:

(A) Vaccine incentives.

(B) **A hiring bonus offered to a prospective employee.**

(C) **A retention bonus offered to an employee.**

(2) “Employee” means any individual who, otherwise than as a copartner of the employer, as an independent contractor or as a participant in a work training program administered under the state or federal assistance laws, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only partly in this state, an individual is not an employee unless the contract of employment of the employee has been entered into, or payments thereunder are ordinarily made or to be made, within this state.

(3)(a) “Employer” means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(b) “Employer” does not include the federal government.

(4) “Equal-pay analysis” means an evaluation process to assess and correct wage disparities among employees who perform work of comparable character.

(5) “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

(6) “Public health emergency” means:

(a) A public health emergency declared under ORS 433.441.

(b) An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

(7) “Rate” with reference to wages means:

(a) The basis of compensation for services by an employee for an employer; and

(b) Compensation based on the time spent in the performance of the services, on the number of operations accomplished or on the quantity produced or handled.

(8) “Sexual orientation” has the meaning given that term in ORS 174.100.

(9) “System” means a consistent and verifiable method in use at the time that a violation is alleged under ORS 652.220.

(10) “Unpaid wages” means the difference between the wages actually paid to an employee and the wages required under ORS 652.220 to be paid to the employee.

(11) “Vaccine incentives” means monetary or nonmonetary incentives, including but not limited to additional paid time off or protected time off from work provided by employers to employees who have been immunized against infectious diseases for which a public health emergency has been declared.

(12) “Veteran status” means an individual is a veteran as defined in ORS 408.225.

(13) “Wages” means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, or paid in cash or any medium other than cash.

(14) “Working conditions” includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee.

(15) “Work of comparable character” means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title.

SECTION 4. ORS 652.210, as amended by sections 2 and 3 of this 2021 Act, is amended to read: 652.210. As used in ORS 652.210 to 652.235, unless the context requires otherwise:

(1)(a) “Compensation” includes wages, salary, bonuses, benefits, fringe benefits and equity-based compensation.

(b) “Compensation” does not include[:]

[*(A)*] vaccine incentives.

[*(B)*] *A hiring bonus offered to a prospective employee.*]

[*(C)*] *A retention bonus offered to an employee.*]

(2) “Employee” means any individual who, otherwise than as a copartner of the employer, as an independent contractor or as a participant in a work training program administered under the state or federal assistance laws, renders personal services wholly or partly in this state to an employer who pays or agrees to pay such individual at a fixed rate. However, when services are rendered only partly in this state, an individual is not an employee unless the contract of employment of the employee has been entered into, or payments thereunder are ordinarily made or to be made, within this state.

(3)(a) “Employer” means any person employing one or more employees, including the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(b) “Employer” does not include the federal government.

(4) “Equal-pay analysis” means an evaluation process to assess and correct wage disparities among employees who perform work of comparable character.

(5) “Protected class” means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age.

(6) “Public health emergency” means:

(a) A public health emergency declared under ORS 433.441.

(b) An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

(7) “Rate” with reference to wages means:

(a) The basis of compensation for services by an employee for an employer; and

(b) Compensation based on the time spent in the performance of the services, on the number of operations accomplished or on the quantity produced or handled.

(8) “Sexual orientation” has the meaning given that term in ORS 174.100.

(9) “System” means a consistent and verifiable method in use at the time that a violation is alleged under ORS 652.220.

(10) “Unpaid wages” means the difference between the wages actually paid to an employee and the wages required under ORS 652.220 to be paid to the employee.

(11) “Vaccine incentives” means monetary or nonmonetary incentives, including but not limited to additional paid time off or protected time off from work provided by employers to employees who

have been immunized against infectious diseases for which a public health emergency has been declared.

(12) "Veteran status" means an individual is a veteran as defined in ORS 408.225.

(13) "Wages" means all compensation for performance of service by an employee for an employer, whether paid by the employer or another person, or paid in cash or any medium other than cash.

(14) "Working conditions" includes work environment, hours, time of day, physical surroundings and potential hazards encountered by an employee.

(15) "Work of comparable character" means work that requires substantially similar knowledge, skill, effort, responsibility and working conditions in the performance of work, regardless of job description or job title.

SECTION 5. (1) The amendments to ORS 652.210 by section 2 of this 2021 Act apply to complaints filed with the Commissioner of the Bureau of Labor and Industries and to claims filed in a circuit court on or after April 29, 2021.

(2) The amendments to ORS 652.210 by section 3 of this 2021 Act apply to complaints filed with the Commissioner of the Bureau of Labor and Industries and to claims filed in a circuit court on or after May 25, 2021.

SECTION 6. The amendments to ORS 652.210 by section 4 of this 2021 Act become operative on March 1, 2022.

SECTION 7. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House March 16, 2021

Received by Governor:

Repassed by House June 14, 2021

.....M.,....., 2021

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2021

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 9, 2021

Filed in Office of Secretary of State:

.....M.,....., 2021

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Peter Courtney, President of Senate

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Shemia Fagan, Secretary of State