

Requested by Senator JOHNSON

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2818**

1 On page 1 of the printed A-engrossed bill, line 2, before the period insert
2 “, 653.010 and 653.261; and declaring an emergency”.

3 On page 2, after line 28, insert:

4 **“SECTION 2.** ORS 653.010 is amended to read:

5 “653.010. As used in ORS 653.010 to 653.261, unless the context requires
6 otherwise:

7 “(1) ‘Commissioner’ means the Commissioner of the Bureau of Labor and
8 Industries.

9 “(2) ‘Employ’ includes to suffer or permit to work but does not include
10 voluntary or donated services performed for no compensation or without ex-
11 pectation or contemplation of compensation as the adequate consideration
12 for the services performed for a public employer referred to in subsection (3)
13 of this section, or a religious, charitable, educational, public service or sim-
14 ilar nonprofit corporation, organization or institution for community service,
15 religious or humanitarian reasons or for services performed by general or
16 public assistance recipients as part of any work training program adminis-
17 tered under the state or federal assistance laws.

18 “(3) ‘Employer’ means any person who employs another person including
19 the State of Oregon or a political subdivision thereof or any county, city,
20 district, authority, public corporation or entity and any of their instrument-
21 alities organized and existing under law or charter.

1 “(4) ‘Minor’ means any person under 18 years of age.

2 “(5) ‘Occupation’ means any occupation, service, trade, business, industry,
3 or branch or group of industries or employment or class of employment in
4 which employees are gainfully employed.

5 “(6) ‘Organized camp’ means a day or resident camp, whether or not op-
6 erated for profit, established to give campers recreational, creative, religious
7 or educational experience in cooperative group living wherein the activities
8 are conducted on a closely supervised basis, whether or not the camp is used
9 primarily by an organized group or by members of the public and whether
10 or not the activities or facilities are furnished free of charge or for the
11 payment of a fee.

12 “(7) ‘Outside salesperson’ means any employee who is employed for the
13 purpose of and who is customarily and regularly engaged away from the
14 employer’s place or places of business in making sales, or obtaining orders,
15 or obtaining contracts for services and whose hours of work of any other
16 nature for the employer do not exceed 30 percent of the hours worked in the
17 workweek by the nonexempt employees of the employer.

18 “(8) ‘Piece-rate’ means a rate of pay calculated on the basis of the quan-
19 tity of the crop harvested.

20 “(9) ‘Salary’ means no less than the wage set pursuant to ORS 653.025,
21 multiplied by 2,080 hours per year, then divided by 12 months.

22 “(10) ‘Wages’ means compensation due to an employee by reason of em-
23 ployment, payable in legal tender of the United States or check on banks
24 convertible into cash on demand at full face value, subject to such de-
25 ductions, charges or allowances as are permitted in ORS 653.035.

26 “(11)(a) ‘Work time’ includes both time worked and time of authorized
27 attendance.

28 “(b) **‘Work time’ does not include meal periods under ORS 653.261.**

29 **“SECTION 3.** ORS 653.261 is amended to read:

30 “653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries

1 may adopt rules prescribing such minimum conditions of employment, ex-
2 cluding minimum wages, in any occupation as may be necessary for the
3 preservation of the health of employees. The rules may include, but are not
4 limited to, minimum meal periods and rest periods, and maximum hours of
5 work, but not less than eight hours per day or 40 hours per workweek;
6 however, after 40 hours of work in one workweek overtime may be paid, but
7 in no case at a rate higher than one and one-half times the regular rate of
8 pay of the employees when computed without benefit of commissions, over-
9 rides, spiffs and similar benefits.

10 “(b) As used in this subsection, ‘workweek’ means a fixed period of time
11 established by an employer that reflects a regularly recurring period of 168
12 hours or seven consecutive 24-hour periods. A workweek may begin on any
13 day of the week and any hour of the day and need not coincide with a cal-
14 endar week. The beginning of the workweek may be changed if the change
15 is intended to be permanent and is not designed to evade overtime require-
16 ments.

17 “(2) Rules adopted by the commissioner pursuant to subsection (1) of this
18 section do not apply to individuals employed by this state or a political
19 subdivision or quasi-municipal corporation thereof if other provisions of law
20 or collective bargaining agreements prescribe rules pertaining to conditions
21 of employment referred to in subsection (1) of this section, including meal
22 periods, rest periods, maximum hours of work and overtime.

23 “(3) Rules adopted by the commissioner pursuant to subsection (1) of this
24 section regarding meal periods and rest periods do not apply to nurses who
25 provide acute care in hospital settings if provisions of collective bargaining
26 agreements entered into by the nurses prescribe rules concerning meal peri-
27 ods and rest periods.

28 “(4)(a) **An employer who violates the meal period requirements es-**
29 **tablished under rules adopted by the commissioner pursuant to sub-**
30 **section (1) of this section is liable to an employee in an amount**

1 **determined by the commissioner by rule. The amount owed to an em-**
2 **ployee under this subsection constitutes a penalty and is not consid-**
3 **ered wages or compensation for purposes of ORS 652.150.**

4 **“(b) A record showing that a meal period was shortened by an in-**
5 **substantial period of time of five minutes or less in duration, before**
6 **the entire minimum meal period has passed, does not constitute a vi-**
7 **olation of the minimum meal period requirements established under**
8 **rules adopted by the commissioner pursuant to subsection (1) of this**
9 **section, provided that:**

10 **“(A) The employer provided and encouraged an uninterrupted min-**
11 **imum meal period; and**

12 **“(B) The meal period was not shortened at the direction of the**
13 **employer.**

14 **“[(4)(a)] (5)(a) The commissioner shall adopt rules regarding meal periods**
15 **for employees who serve food or beverages, receive tips and report the tips**
16 **to the employer.**

17 **“(b) In rules adopted by the commissioner under paragraph (a) of this**
18 **subsection, the commissioner shall permit an employee to waive a meal pe-**
19 **riod. However, an employer may not coerce an employee into waiving a meal**
20 **period.**

21 **“(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty**
22 **provided by law, the commissioner may assess a civil penalty not to exceed**
23 **\$2,000 against an employer that the commissioner finds has coerced an em-**
24 **ployee into waiving a meal period in violation of this subsection. Each vio-**
25 **lation is a separate and distinct offense. In the case of a continuing**
26 **violation, each day’s continuance is a separate and distinct violation.**

27 **“(d) Civil penalties authorized by this subsection shall be imposed in the**
28 **manner provided in ORS 183.745. All sums collected as penalties under this**
29 **subsection shall be applied and paid over as provided in ORS 653.256 (4).**

30 **“SECTION 4. This 2021 Act being necessary for the immediate**

1 **preservation of the public peace, health and safety, an emergency is**
2 **declared to exist, and this 2021 Act takes effect on its passage.”.**

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