

House Bill 4158

Sponsored by COMMITTEE ON RULES (at the request of Representative Sue Rieke Smith)

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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: This Act updates the laws on what wages must be paid to workers who engage in certain domestic services. (Flesch Readability Score: 67.3).

Clarifies the meaning of "companionship services" for purposes of minimum wage and overtime requirements for certain individuals performing such services.

A BILL FOR AN ACT

Relating to wage requirements for individuals performing companionship services; amending ORS 653.020 and 653.547.

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

SECTION 1. ORS 653.020 is amended to read:

653.020. ORS 653.010 to 653.261 do not apply to any of the following employees:

(1) An individual employed in agriculture if:

(a) Such individual is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment and is employed by an employer who did not, during any calendar quarter during the preceding year, use more than 500 piece-rate-work-days of agricultural labor;

(b) Such individual is the parent, spouse, child or other member of the employer's immediate family;

(c) Such individual:

(A) Is employed as a hand harvest or pruning laborer and is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment;

(B) Commutes daily from a permanent residence to the farm on which the individual is so employed; and

(C) Has been employed in agricultural labor less than 13 weeks during the preceding calendar year;

(d) Such individual, other than an individual described in paragraph (c) of this subsection:

(A) Is 16 years of age or under and is employed as a hand harvest laborer, is paid on a piece-rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; and

(B) Is paid at the same piece-rate as employees over 16 years of age on the same farm; or

(e) Such employee is principally engaged in the range production of livestock and earns a salary and is paid on a salary basis.

(2) An individual employed in domestic service on a casual basis in or about a family home.

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 (3) An individual engaged in administrative, executive or professional work who:

2 (a) Performs predominantly intellectual, managerial or creative tasks;

3 (b) Exercises discretion and independent judgment; and

4 (c) Earns a salary and is paid on a salary basis.

5 (4) An individual employed by the United States.

6 (5) An individual who is employed by an institution whose function is primary or secondary ed-
7 ucation, and in which the individual is an enrolled student.

8 (6) An individual engaged in the capacity of an outside salesperson or taxicab operator.

9 (7) An individual domiciled at a place of employment for the purpose of being available for
10 emergency or occasional duties for time other than that spent performing these duties, provided that
11 when the individual performs emergency or occasional duties, the individual must be paid no less
12 than the wage specified in ORS 653.025.

13 (8) An individual paid for specified hours of employment, the only purpose of which is to be
14 available for recall to duty.

15 (9) An individual domiciled at multiunit accommodations designed to provide other people with
16 temporary or permanent lodging, for the purpose of maintenance, management or assisting in the
17 management of same.

18 (10) An individual employed on a seasonal basis at:

19 (a) An organized camp operated for profit that generates gross annual income of less than
20 \$500,000; or

21 (b) A nonprofit organized camp.

22 (11) An individual employed at a nonprofit conference ground or center operated for educational,
23 charitable or religious purposes.

24 (12) An individual who performs services as a volunteer firefighter, as defined in ORS 652.050.

25 (13) An individual who performs child care services in the home of the individual or in the home
26 of the child.

27 (14) An individual employed in domestic service employment in or about a family home to pro-
28 vide companionship services, **as defined in 29 C.F.R. 552.6, as in effect on January 1, 2016**, for
29 individuals who, because of age or infirmity, are unable to care for themselves, **unless, and only**
30 **to the extent that, the individual is employed, singly or jointly, by a third-party home care**
31 **agency.**

32 (15) An individual who performs service as a caddy at a golf course in an established program
33 for the training and supervision of caddies under the direction of a person who is an employee of
34 the golf course.

35 (16) An individual who volunteers as a golf course marshal if:

36 (a) The services the individual provides are limited to monitoring starting times and speed of
37 play and informing golfers of golf course etiquette;

38 (b) The individual is not allowed to provide volunteer golf course marshal services for more than
39 30 hours in a calendar week; and

40 (c) The individual receives no wage other than golf passes for providing the volunteer golf
41 course marshal services.

42 (17) An individual employed as a resident manager by an adult foster home that is licensed
43 pursuant to ORS 443.705 to 443.825 and who is domiciled at the adult foster home.

44 (18) An individual residing in a mobile home park or manufactured dwelling park designed to
45 provide other people with temporary or permanent lodging, for the purpose of maintenance, man-

1 agement or in assisting in the management of same.

2 (19) An individual who volunteers as a campground host and who resides in a campground
3 owned by a public agency that provides temporary accommodations for travelers, whether under
4 public or private management, and who provides information and emergency assistance.

5 (20) An individual who:

6 (a) Is registered with the National Ski Patrol or a similar nonprofit ski patrol organization as
7 a nonprofessional ski patroller and who receives no wage other than passes authorizing access to
8 and use of a ski area, as defined in ORS 30.970, for performing ski patrol services, including but not
9 limited to services related to preserving the safety of and providing information to skiers or
10 snowboarders; or

11 (b) Receives no wage other than passes authorizing access to and use of a ski area, as defined
12 in ORS 30.970, for performing services directly related to the organizing or conducting of skiing or
13 snowboarding races or other similar competitions that are:

14 (A) Sponsored and organized by a nonprofit corporation, as defined in ORS 65.001; and

15 (B) Held in a ski area, as defined in ORS 30.970.

16 (21) An individual who has entered into a contract to play minor league baseball for a profes-
17 sional sports organization and who is subject to a collective bargaining agreement, the terms of
18 which provide for the payment of wages and working conditions.

19 **SECTION 2.** ORS 653.547 is amended to read:

20 653.547. (1) As used in this section:

21 (a) "Domestic service" means services related to the care of persons in private homes or the
22 maintenance of private homes or their premises.

23 (b)(A) "Domestic worker" means an individual who works in the home of another person for the
24 purpose of caring for a child, doing housekeeping or providing other domestic service and who is
25 not compensated with public funds for the work performed.

26 (B) "Domestic worker" does not include:

27 (i) A parent or spouse of the employer.

28 (ii) A child of the employer who is under 26 years of age.

29 (iii) Students who regularly attend elementary or secondary school during the day.

30 (iv) Children, other than children of the employer, who are under 14 years of age.

31 (v) Children under 18 years of age who provide babysitting services and persons who provide
32 babysitting on a casual basis.

33 (vi) Persons who perform casual labor in private homes or the maintenance of private homes or
34 their premises, including but not limited to yard work, washing windows and shoveling snow.

35 (vii) Individuals employed by organizations licensed as required by ORS 443.015 or 443.315.

36 (viii) Independent contractors.

37 (ix) Individuals performing companionship services [*exempt from the provisions of the Fair Labor*
38 *Standards Act of 1938 (29 U.S.C. 201 et seq.)*], **as defined in 29 C.F.R. 552.6, as in effect on Jan-**
39 **uary 1, 2016, unless, and only to the extent that, the individuals are employed, singly or**
40 **jointly, by a third-party home care agency.**

41 (x) Persons who perform house sitting duties that do not involve domestic service.

42 (xi) Persons who provide domestic service in exchange for an in-kind good or service.

43 (c) "Employer" means a person that employs another person in this state.

44 (2) A person employing a domestic worker shall:

45 (a) Notwithstanding ORS 653.020, pay the domestic worker an overtime wage at a rate of one

1 and one-half times the worker's base rate for hours worked in excess of 40 hours in a workweek,
2 or in excess of 44 hours in a workweek if the domestic worker lives in the home of the employer.

3 (b) Provide the domestic worker at least 24 consecutive hours of rest each workweek. If the
4 domestic worker agrees to work on the anticipated day of rest, the employer shall pay the employee
5 the overtime rate specified in paragraph (a) of this subsection.

6 (c) If the domestic worker lives in the home of the employer, provide at least eight consecutive
7 hours of rest within each 24-hour period and provide a space with adequate conditions for uninter-
8 rupted sleep.

9 (d) If the domestic worker lives in the home of the employer, permit the domestic worker to cook
10 the worker's own food, subject to reasonable restrictions based on the religious or health needs of
11 the home's residents.

12 (e) If the domestic worker worked an average of at least 30 hours per week during the previous
13 year, provide the domestic worker with at least three paid personal leave days off.

14 (3) Notwithstanding subsection (2)(a) of this section, the Commissioner of the Bureau of Labor
15 and Industries shall adopt rules for the calculation of overtime wages for domestic workers during
16 periods of travel and medical emergencies.

17 (4) A person that employs a domestic worker may not:

18 (a) Request that the domestic worker allow the employer, on either a mandatory or voluntary
19 basis, to have possession of the worker's passport.

20 (b) Engage in unwelcome sexual advances, request sexual favors or engage in other verbal or
21 physical conduct of a sexual nature directed toward a domestic worker when:

22 (A) Submission to the conduct is made, either explicitly or implicitly, a term or condition of the
23 domestic worker's employment;

24 (B) Submission to or rejection of the conduct by the domestic worker is used as the basis for
25 employment decisions affecting the domestic worker; or

26 (C) The conduct has the purpose or effect of unreasonably interfering with the domestic
27 worker's work performance by creating an intimidating, hostile or offensive work environment.

28 (c) Subject a domestic worker to harassment based on gender, race, religion, disability, sexual
29 orientation, gender identity or national origin if the harassment has the purpose or effect of unrea-
30 sonably interfering with the worker's work performance by creating an intimidating, hostile or of-
31 fensive work environment.

32 (d) Retaliate or in any way discriminate against an individual with respect to hire or tenure or
33 any other term or condition of employment because the individual has inquired about the provisions
34 of this section and ORS 653.549 or has reported a violation to, or filed a complaint with, the Bureau
35 of Labor and Industries alleging a violation of this section.