OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

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CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILING CAPTION: Adoption of administrative rules relating to penalties for violations of employee work schedule regulations

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CONTACT: Christine E. Lewis
971-673-0841
christine.e.lewis@state.or.us

800 NE Oregon Street
Suite 1045
Portland,OR 97232

Filed By:
Gerhard Taeubel
Rules Coordinator

RULES:
839-026-0120, 839-026-0130, 839-026-0140

ADOPT: 839-026-0120

RULE TITLE: Civil Penalties

NOTICE FILED DATE: 04/24/2018

RULE SUMMARY: The rule describes violations relating to ORS 653.412 to ORS 653.485, which pertains to employee work schedules in certain industries, for which a civil penalty may be assessed.

RULE TEXT:
(1) The commissioner may assess a civil penalty for any of the following violations of ORS 653.412 to 653.485 and these rules:
(a) Failure to provide an employee with a work schedule in writing or to post a written work schedule in a conspicuous and accessible location at least seven (7) calendar days before the first day of the work schedule (beginning on July 1, 2020, at least 14 calendar days before the first day of the work schedule);
(b) Failure to compensate an employee for an employer-requested change to the employee's written work schedule without advance notice;
(c) Scheduling or requiring an employee to work a shift not included in the employee's written work schedule;
(d) Scheduling or requiring an employee to work during a rest period established by ORS 653.442 without the employee's consent;
(e) Failure to compensate an employee for working during a rest period established by ORS 653.442;
(f) Denying or attempting to deny the exercise of any right protected under ORS 653.412 to 653.485 or retaliating against any individual because the individual has inquired about the provisions of ORS 653.412 to 653.485;
(g) Failure to retain records that document the employer's compliance with ORS 653.412 to 653.485;
(h) Failure to display in the workplace a poster giving notice of the rights described in ORS 653.412 to 653.485; and,
(i) Using the voluntary standby list for purposes other than to address unanticipated customer needs or unexpected employee absences.
(2) As provided in ORS 653.432(7), the commissioner may assess a civil penalty against an employer who has coerced an

employee into requesting or agreeing to be added to the voluntary standby list. For the purpose of this rule, an employer will be considered to have coerced an employee into requesting or agreeing to be added to the voluntary standby list under the following circumstances:

(a) The employer requires an employee to request or agree to be added to the voluntary standby list;

(b) The employer requires an employee to request or agree to be added to the voluntary standby list as a condition of employment; or

(c) The employer requests or requires any person, including another employee, to require an employee to request or agree to be added to the voluntary standby list.

STATUTORY/OTHER AUTHORITY: ORS 651.060(4)

STATUTES/OTHER IMPLEMENTED: ORS 653.412 - 653.485

ADOPT: 839-026-0130

RULE TITLE: Schedule of Civil Penalties for Violations of ORS 653.412 to 653.485

NOTICE FILED DATE: 04/24/2018

RULE SUMMARY: The rule establishes a schedule of civil penalties for violations of ORS 653.412 to ORS 653.485, which pertains to employee work schedules in certain industries.

RULE TEXT:

(1) Except as provided in sections (2) and (3) of this rule, the civil penalty for any one violation of ORS 653.412 to 653.485 or any rule adopted pursuant thereto shall not exceed $1,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) The civil penalty for failing to display in the workplace a poster giving notice of the rights described in ORS 653.412 to 653.485 shall not exceed $500.

(3) When the commissioner determines that an employer has violated ORS 653.432(7) by coercing an employee into requesting or agreeing to be added to the voluntary standby list, the civil penalty shall not exceed $2,000.

(4) The civil penalties set out in this rule shall be in addition to any other penalty assessed or imposed by law or rule.

(5) The actual amount of the civil penalty will be set in accordance with the determinations and considerations referred to in OAR 839-026-0140.

STATUTORY/OTHER AUTHORITY: ORS 651.060(4)

STATUTES/OTHER IMPLEMENTED: ORS 653.412 - 653.485

ADOPT: 839-026-0140

RULE TITLE: Criteria for Determining a Civil Penalty

NOTICE FILED DATE: 04/24/2018

RULE SUMMARY: The rule establishes criteria for determining a civil penalty relating to ORS 653.412 to ORS 653.485, which pertains to employee work schedules in certain industries.

RULE TEXT:

(1) The commissioner may consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed and cite those the commissioner finds to be appropriate:

(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the employer knew or should have known of the violation;

(e) The opportunity and degree of difficulty to comply; and

(f) Whether the employer's action or inaction has resulted in the loss of a substantive right of an employee.

(2) It shall be the responsibility of the employer to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be assessed.

(3) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.

STATUTORY/OTHER AUTHORITY: ORS 651.060(4)

STATUTES/OTHER IMPLEMENTED: ORS 653.412 - 653.485