



**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 1**

**RULES FOR WAGE CLAIM ENFORCEMENT, MAXIMUM HOURS OF WORK IN MILLS, FACTORIES  
AND MANUFACTURING ESTABLISHMENTS AND RULES PERTAINING TO MONEYS COLLECTED  
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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 1**

**RULES FOR WAGE CLAIM ENFORCEMENT, MAXIMUM HOURS OF WORK IN MILLS, FACTORIES  
AND**

**MANUFACTURING ESTABLISHMENTS AND RULES PERTAINING TO MONEYS COLLECTED FROM  
EMPLOYEES FOR GROUP HEALTH INSURANCE COVERAGE AND NOTIFICATION OF VARIOUS  
PARTIES ON TERMINATION OF GROUP HEALTH INSURANCE COVERAGE**

**839-001-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule relating to wage claims enforcement matters, any rule relating to interpretive rules regarding maximum hours of work, and any rules pertaining to money collected from employees for group health insurance coverage and notification of various parties on termination of group health insurance coverage the Wage and Hour Division of the Bureau of Labor and Industries shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the Wage and Hour Division's mailing list for wage claims enforcement established pursuant to ORS 183.335(7).
- (3) By mailing a copy of the notice of intended action to:
  - (a) Associated Press;
  - (b) The Northwest Labor Press;
  - (c) Oregon Legal Services Corporation;
  - (d) Oregon Law Center, Inc.;
  - (e) Associated Oregon Industries;
  - (f) Associated General Contractors;
  - (g) Associated Building Contractors;

- (h) Other associations and organizations as appropriate;
- (i) Oregon AFL/CIO;
- (j) Other labor unions as appropriate;
- (k) Department of Consumer and Business Services;
- (L) Associations and persons representing group health insurance carriers.

Stat. Auth.: ORS Ch. 183, 651, 652.710(11) & 673

Stats. Implemented: ORS Ch. 652

Hist.: BL 184, f. & ef. 1-21-76; BL 190, f. & ef. 5-7-76; BL 1-1982, f. & ef. 1-13-82; BL 8-1990, f. & cert. ef. 5-11-90; BL 10-1992, f. & cert. ef. 7-1-92; BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0005**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective September 9, 1995, are hereby adopted by reference as permanent rules for Wage Claim Enforcement matters, for Interpretive Rules Regarding Maximum Hours of Work and for rules Pertaining to Moneys Collected from Employees for Group Health Insurance Coverage and Notification of Various Parties on Termination of Group Health Insurance Coverage except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of ORS Chapter 652 enforced by the Bureau of Labor and Industries. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183, 651, 652.710(11) & 673

Stats. Implemented: ORS Ch. 652

Hist.: BL 122(Temp), f. & ef. 4-5-72; BL 128(Temp), f. 8-3-72, ef. 8-15-72; BL 140(Temp), f. 5-2-73, ef. 5-15-73; BL 146, f. 9-11-73, ef. 10-1-73; BL 154(Temp), f. & ef. 1-22-74; BL 158, f. 3-19-74, ef. 4-11-74; BL 192, f. & ef. 7-6-76, Renumbered from 839-014-0001; BL 1-1982, f. & ef. 1-13-82; BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 9-1986, f. & ef. 9-2-86; BL 8-1989, f. & cert. ef. 5-11-90; BL 10-1992, f. & cert. ef. 7-1-92; BL 9-1996, f. & cert. ef. 10-8-96

**Interpretive Rules Regarding Maximum Hours to Work**

**Maximum Hours of Work in Mills, Factories, Manufacturing Establishments**

**837-001-0100**

**Definitions**

As used in ORS 652.010 to 652.030 and in OAR 839-001-0100 to 839-001-0200, unless the context requires otherwise:



- (1) "Agent of the Employer" includes any person acting as the employer's agent for purposes of assigning work, assigning hours of work, or authorizing overtime payments to employees.
- (2) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.
- (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (4) "Day" or "Day of 24 Hours" means any time period of 24 consecutive hours as determined by the employer.
- (5) "Employ" includes to suffer or permit to work.
- (6) "Employed in" refers to employment of employees in the actual place specified in ORS 652.010 to 652.030. Employees who are not performing duties in the named places are not "employed in" those places.
- (7) "Employee" means any individual employed by an employer.
- (8) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
- (9) "Factory" means a building or set of buildings with facilities for manufacturing; the seat of some kind of production. "Factory" in the context used in these rules is a "manufacturing establishment".
- (10) "Finished Forest Products" means a forest product ready for sale to a wholesaler or retailer of finished products.
- (11) "Manufacturing Establishment" means any place where machinery is used for manufacturing purposes:
  - (a) "Manufacturing" in the context used in these rules means the process of making goods or any material produced by machinery; anything made from raw materials by machinery; the production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, by the use of machinery;
  - (b) As used in this subsection, "machinery" means power driven machinery by electricity, nuclear and fossil fuels, hydroelectric, geothermal, or some power source other than by human hand, foot, breath or otherwise.
- (12) "Mill" means a building or collection of buildings with machines for manufacturing. "Mills" in the context used in these rules are "manufacturing establishments".
- (13) "Primary Duty" means duties the employee is engaged in over 50 percent of the time the employee is employed in any work week.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.010 - 652.030

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

## **Exemptions**

### **839-001-0125**

#### **Individual Exemptions**

- (1) The following employees are exempt from the provisions of ORS 652.020:

- (a) Any employee whose primary duty is that of a member of a logging train crew;
  - (b) Any employee whose primary duty is that of watchman/woman;
  - (c) Any employee whose primary duty is that of fireman/woman. As used in this rule, the term "fireman" means a person whose primary duty is to operate and clean boilers or to maintain fuel and steam pressure levels in those boilers;
  - (d) Any employee who as one of his/her regular duties is engaged in the transportation of other employees to and from work;
  - (e) Any employee whose primary duty is that of making necessary repairs. This includes employees conducting maintenance on buildings, equipment or machinery;
  - (f) Employees engaged in emergency work pursuant to section (2) of this rule;
  - (g) Any employee whose primary duty is that of cleaning, guarding, repairing and otherwise caring for the living quarters and immediate surrounding areas of other employees;
  - (h) Any employee whose primary duty is that of feeding, grooming, guarding or otherwise caring for livestock by, among other things, cleaning and repairing the areas in which the livestock is kept;
  - (i) Any employee whose primary duty is to be employed in messhalls where meals are served to other employees. This would include any and all employment necessary to conduct the messhall operations;
  - (j) Any employee whose primary duty is that of supervising and directing work. This includes supervisors, managers, foremen/women and persons who are temporarily acting in these capacities in the absence of the named employees;
  - (k) Any employee whose primary duty is the loading and removal of finished forest products. This includes employees engaged in shipping or otherwise removing the final finished forest product from the establishment's premises. This applies to finished products only and not to products shipped for further processing at another location.
- (2) Employees engaged in activities under emergency situations are only exempt when the emergency puts life or property in imminent danger. In order to be exempt, therefore, employees must be employed in an emergency situation which threatens to harm or destroy life or property. When the normal production process is interrupted by a breakdown of machinery or unexpected absences of employees, life and property are not normally threatened with harm or destruction. For this reason, the exemption is not applicable to normal routine operational occurrences.
- (3) Employees who are party to a collective bargaining agreement are not subject to ORS 652.020, provided that:
- (a) The agreement is in effect at the employee's work site;
  - (b) The agreement contains a provision which limits the employee's required hours of work; and
  - (c) The agreement contains a provision for the payment of overtime hours of work.
- (4) Except as provided in section (5) of this rule, employees who are party to a collective bargaining agreement which, for any reasons, was not renewed, extended or not otherwise in force are not subject to ORS 652.020, provided that:
- (a) The agreement was in effect at the employee's work site;
  - (b) The limits on the employee's required hours of work continue as if the agreement were still in effect; and
  - (c) The payment of overtime continues as if the agreement were still in effect.
- (5) Section (4) of this rule does not apply under the following circumstances:

- (a) Employees who are party to the collective bargaining agreement are locked out;
- (b) Employees who are party to the collective bargaining agreement are engaged in a strike; or
- (c) The employer has unilaterally implemented new terms and conditions of employment.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0127**

**Establishment Exemptions**

Until the states of Washington, Idaho, and California enact legislation similar to ORS 652.020, the provisions of that statute do not apply to employees employed in the following establishments:

- (1) A sawmill. As used in this rule, a sawmill means a mill that is exclusively engaged in the manufacture and distribution of lumber made from logs by use of saws to cut the logs into various size boards.
- (2) A shingle mill. As used in this rule, a shingle mill means a mill exclusively engaged in the manufacture and distribution of wooden shingles.
- (3) A planing mill. As used in this rule, a planing mill means a mill exclusively engaged in the planing of lumber so as to finish the boards cut in the sawmill and in the distribution of the finished forest product.
- (4) A logging camp. As used in this rule, a logging camp means an establishment which provides support for logging operations by means of housing, feeding and otherwise caring for employees engaged in logging operations by means of maintaining supplies and equipment necessary to continue logging operations.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 6523.030

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0130**

**Exempt and Non-exempt Work**

- (1) The exempt status of an employee is determined by the type of work the individual performs and the location of the work performed in any one day. As indicated in sections (2) and (3) of this rule, the exempt status of individual employees may vary from day to day.
- (2) Employees performing exempt and nonexempt work are exempt from the provisions of ORS 653.020 only when they are engaged in exempt work more than 50 percent of their working time in any one day.
- (3) Where a mill, factory or manufacturing establishment is a combination of an exempt and non-exempt establishment, employees who are exclusively engaged in the sawmill, shingle mill, planing mill, or logging camp areas of the establishment are exempt. However, when an employee is engaged in both exempt and non-exempt areas of the establishment, the employee is not exempt.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**Determination of Certain Terms**

**839-001-0140**

**Determination of the Day; Failure to Make Determination**

- (1) The employer shall establish the beginning time and the ending time of the day to be used by the employer for purposes of complying with these rules.
- (2) Once established, the beginning time of the day shall not be changed unless the change is intended to be permanent and is not designed to circumvent the provisions of ORS 652.020.
- (3) If the employer fails to establish the beginning and ending times of day as provided for in section (1) of this rule, the Bureau shall consider the day to begin at the time the individual employee commences work and to end 24 consecutive hours after the work began.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0143**

**Determination of the Work Week; Failure to Make Determination**

- (1) As used in OAR 839-001-0100, "work week" means any seven consecutive days as determined by the employer. The employer shall establish the beginning day and the ending day to be used by the employer for purposes of determining the "primary duty" of the employee.
- (2) Once established, the beginning day shall not be changed unless the change is intended to be permanent and is not designed to circumvent the provisions of ORS 652.020 or these rules.
- (3) If an employer fails to establish the beginning day of the work week as provided for in section (1) of this rule, the Bureau shall consider the work week to begin on the day the individual employee commences work and to end seven consecutive days after the work began.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0145**

**Determination of Employees "Employed in" a Named Establishment**

- (1) As used in ORS 652.020, the term "employed in" refers to employees who are actually employed in the mill, factory or manufacturing establishment. Employees who are employed by the same employer but not employed to perform duties in a mill, factory, or manufacturing establishment are not covered by ORS 652.020 because they are not "employed in" the establishment.
- (2) Employees who are employed to perform duties that do not include work in connection with production machinery in a mill, factory, or manufacturing establishment but perform their duties in a location that is physically separated from the actual production process by means of an architectural barrier, are not covered by ORS 652.020 because they are not "employed in" the establishment.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BI 8-1990, f. & cert. ef. 5-11-90

**839-001-0150**

**Civil Penalties for Violation of ORS 652.020, Maximum Working Hours in Mills, Factories and Manufacturing Establishments: Overtime Hours and Pay**

As used in ORS 652.020, 652.900 and OAR 839-001-0150 to 839-001-0160:

- (1) "Person" means any individual, sole proprietorship, partnership, corporation, or other business or legal entity.
- (2) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.
- (3) "Knowingly" or "Willfully" means action undertaken with actual knowledge of a thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0153**

**Violations Separate and Distinct**

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.020

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0155**

**Violations for Which a Civil Penalty May be Imposed**

Pursuant to ORS 652.900, the Commissioner may assess a civil penalty for violations of ORS 652.020 or of these rules as follows:

- (1) Failure to pay employees subject to ORS 652.020 time and one-half their regular rate of pay for all hours worked over ten in any day of 24 hours.
- (2) Requiring or permitting any agent of the employer to require to permit employees to work over ten hours in any day of 24 hours when the employees are not paid time and one-half their regular rate of pay for such hours worked over ten in a day.
- (3) Requiring or permitting an employee subject to ORS 652.020 to work more than 13 hours in any day of 24 hours.
- (4) Requiring or permitting any agent of the employer to require or permit employees to work more than 13 hours in any day of 24 hours.

Stat. Auth.: ORS 651.060(4) & Ch. 652

Stats. Implemented: ORS 652.900

Hist.: BI 8-1990, f. & cert. ef. 5-11-90

**839-001-0157**

**Criteria for Determining a Civil Penalty**

- (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.
- (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.

Stat. Auth.: ORS 651.060(4) & Ch.652

Stats. Implemented: ORS 652.900

Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**839-001-0160**

**Schedule of Civil Penalties**

- (1) The civil penalty for any one violation 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) When the Commissioner determines to assess a civil penalty for requiring or permitting an employee to work over ten hours in a day when the employee is not paid time and one-half the regular rate of pay in violation of ORS 652.020, the minimum civil penalty to be assessed shall be \$50 per day for each employee affected. For example, when the employer or an employer's agent requires or permits five employees to work over ten hours in a day for four days without paying the employees time and one-half their regular rate of pay for the hours worked over ten in a day, the minimum civil penalty to be assessed shall be \$1,000 (5 employees x 4 days x \$50 per day per employee = \$1,000).
- (3) When the Commissioner determines to assess a civil penalty for requiring or permitting an employee to work more than 13 hours in any day of 24 hours, the minimum civil penalty shall be \$500 per day for the first offense. For example, when an employer or an employer's agent requires or permits any number of employees to work over 13 hours in a day for four days, the minimum civil penalty shall be \$2,000 (4 days x \$500/day = \$2,000). When the Commissioner determines to assess a civil penalty for subsequent offenses, the Commissioner may assess up to \$1,000 for each such offense.
- (4) The civil penalties set out in sections (2) and (3) of this rule shall be in addition to any other penalty imposed by law or rule.
- (5) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-001-0157.

Stat. Auth.: ORS 651.060(4) & Ch. 652  
Stats. Implemented: ORS 652.900  
Hist.: BL 8-1990, f. & cert. ef. 5-11-90

**Deductions From Wages**

**839-001-0250**

**Deductions for Costs of Benefits Paid by the Employer While the Employee is on OFLA Leave.**

- The Oregon Family Leave Act (ORS 659.470 to 659.494) provides that notwithstanding ORS 652.610(3), when an employer pays the employee's portion of the cost of providing health, disability, life or other insurance coverage for an employee while the employee is on family leave, the employer may recover such cost under the following circumstances:
- (1) Upon the employee's return to work, the employer may deduct from the employee's pay the amount of the costs it paid, provided, however, that the total amount deducted from any paycheck may not exceed 10% of the employee's gross wages earned in the pay period covered by the paycheck.
  - (2) If an employee does not return to work, the employer may deduct all of the costs it paid from amounts due and owing to the employee, provided, however, that no deduction may be made if the employee fails to return to work for the following reasons:

- (a) The employee's absence from work is caused by a continuation, recurrence or onset of a serious health condition that would entitle the employee to family leave as provided for in ORS 659.470 to 659.494; or
- (b) The employee's absence from work is caused by circumstances beyond the control of the employee.
- (3) If an employee does not return to work the employer may seek to recover amounts paid for insurance coverage on behalf of the employee by any other legal means provided however, that no legal action may be initiated if the employee failed to return to work for the reasons set out in subsections (2)(a) or (2)(b) of this rule.
- (4) The deduction provided for in this rule may be made with or without the employee's authorization. The employer shall notify the employee of the deduction before the deduction is made.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 659.484

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**Payment of Wages at Termination of Employment**

**839-001-0400**

**Generally**

The rules covering the payment of wages at termination of employment provided for in ORS 652.140 to 652.160 are adopted pursuant to the authority contained in ORS 652.165. OAR 839-001-0400 to 839-001-0480 pertain to the payment of wages at termination of employment.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.140 - 652.160

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0410**

**Definitions**

- As used in ORS 652.140 to 652.165 and in OAR 839-001-0400 to 839-001-0480, unless the context requires otherwise;
- (1) "Business day" includes Monday through Friday, exclusive of state holidays as provided in ORS 187.010, in which the business operations of the employer is conducted.
  - (2) "Seasonal farmworker" means any person who, for an agreed remuneration or rate of pay, performs temporary labor for another to work in the production of farm products or planting, cultivating or harvesting of seasonal agricultural crops or in the forestation or reforestation of lands, including but not limited to, the planting, transplanting, tubing, pre-commercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.
  - (3) "Seasonal reforestation worker" means "seasonal farmworker" as defined in subsection (2) of this rule.



(4) "Willfully," as used in ORS 652.150, means that which is done or omitted is done or omitted intentionally. When a person knows what the person is doing, intends to do what the person is doing and is a free agent, the person is acting willfully. An act or omission is willful even if the person did not know the act or omission was a violation of ORS 652.140 or 652.145.

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

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.140 - 652.160

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

## **839-001-0420**

### **Payment of Wages at Termination of Employment**

(1) Except as provided in OAR 839-001-0440, when an employer unilaterally discharges an employee or when the employee and the employer mutually agree to the termination of employment, all of the wages that have been earned but not paid, become due and payable not later than the end of the first business day after the discharge or termination. Except as provided in subsections (3) and (5) of this rule, when the employment terminates because of discharge or mutual agreement on a Saturday, Sunday or holiday, all wages earned and unpaid must be paid by not later than the end of the first business day after the employment termination.

(2) When the employee gives the employer notice of 48 hours or more (not including Saturday, Sunday and holidays) that the employee intends to quit employment, all wages that have been earned but not paid become due and payable on the last day of the employee's employment.

(3) When the employee fails to give the employer notice as provided in subsection (2) of this rule, all wages that have been earned but not paid, become due and payable within five days, excluding Saturdays, Sundays and holidays, of the date the employee quit or at the next regularly scheduled payday, whichever occurs first.

(4) When an employee employed pursuant to an unexpired contract which provides for a definite period of work, quits with or without notice, all wages earned but not paid become due and payable at the next regularly scheduled payday.

(5) When the employment terminates because of discharge, mutual agreement or the employee quits (with or without notice) and the employer is the Oregon State Fair and Exposition Center, a county fair or show, the County Fair Commission or other employer engaged in activities authorized by ORS 565.010 to 565.990, all wages earned and unpaid must be paid not later than the end of the second business day after the employment termination. This subsection does not apply to contractors, exhibitors or others which are not agencies, boards or commissions established in ORS 565.010 to 565.990.

(6) The provisions of this rule do not apply when the employee's employment with the employer is covered by a collective bargaining agreement, the terms of which provide for the payment of wages at termination of employment. However, if the collective bargaining agreement does not contain provisions for the payment of wages at termination of employment, the provisions of this rule are applicable.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.140

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0430**

**When Layoff is Considered Termination of Employment**

- (1) When an employee is laid off with no reasonable expectation that the employee will return to work, the layoff is considered to be a termination of employment for purposes of OAR 839-001-0420 and 839-001-0440 and the wages earned and unpaid shall become due and payable in accordance with OAR 839-001-0420 and 839-001-0440.
- (2) When an employee is laid off and the employee returns to work within 35 days, the layoff is not considered to be a termination of employment for purposes of OAR 839-001-0420 and 839-001-0440 and all wages earned and unpaid shall become due and payable at the next regularly scheduled payday following the layoff. If the layoff occurs on a regularly scheduled payday, the wages become due and payable on the same day.
- (3) This rule applies to all layoffs regardless of whether an employee is subject to recall to work.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.140

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0440**

**Special Provisions for Payment of Wages at Termination for Seasonal Farmworkers and Seasonal Reforestation Workers**

- (1) When a seasonal farmworker or seasonal reforestation worker terminates employment because of discharge or mutual consent, all wages earned and unpaid become due and payable on the last day the employee works.
- (2) When a seasonal farmworker or seasonal reforestation worker quits employment and gives the employer at least 48 hours notice of intent to quit, all wages earned and unpaid become due and payable on the last day the employee works.
- (3) When a seasonal farmworker or seasonal reforestation worker quits employment and fails to give the employer at least 48 hours notice, all wages earned and unpaid become due and payable within 48 hours after the employee quits or on the next regularly scheduled payday, whichever comes first.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.145

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0450**

**Forwarding Wages and Direct Deposit of Wages at Termination of Employment**

- (1) All wages due and payable at termination of employment shall be forwarded by the employer to the employee to any address designated by the employee when the employee requests the employer to forward the wages.
- (2) When the employee and the employer agree, all wages due and payable at termination of employment may be deposited, without discount, in the employee's account in a bank, national bank, mutual savings bank, credit union or

savings and loan association located in Oregon.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.140

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0460**

**Payment in Case of a Dispute Over the Amount of Wages Due at Termination of Employment/Employee Rights and Remedies**

- (1) In case of a dispute over the amount of wages due and payable at termination of employment, the employer shall pay the amount of wages that the employer concedes to be due and payable to the employee. Such payment shall be made unconditionally and within the time set out in OAR 839-001-0420, 839-001-0430 and 839-001-0440.
- (2) An employee may use all remedies available to the employee for the balance of wages that the employee claims are due and payable.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.160

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0470**

**Penalty for Failure to Pay Wages on Termination of Employment**

- (1) When an employer willfully fails to pay all or part of the wages due and payable to the employee upon termination of employment within the time specified in OAR 839-001-0420, 839-001-0430 and 839-001-0440, the employer shall be subject to the following penalty:
  - (a) The wages of the employee shall continue from the date the wages were due and payable until the date the wages are paid or until a legal action is commenced, whichever occurs first;
  - (b) The rate at which the employee's wages shall continue shall be the employee's hourly rate of pay times eight (8) hours for each day the wages are unpaid;
  - (c) Even if the wages are unpaid for more than 30 days, the maximum penalty shall be no greater than the employee's hourly rate of pay times 8 hours per day times 30 days.
- (2) The wages of an employee that are computed at a rate other than an hourly rate shall be reduced to an hourly rate for penalty computation purposes by dividing the total wages earned while employed or the total wages earned in the last 30 days of employment, whichever is less, by the total number of hours worked during the corresponding time period.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.150

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0480**

**Employer Not Subject to Penalty Under Certain Conditions**

When an employer shows that it was financially unable to pay the wages at the time the wages accrued, the employer shall not be subject to the penalty provided for in OAR 839-001-0460. If an employer continues to operate a business or chooses to pay certain debts and obligations in preference to an employee's wages, there is no financial inability.

Stat. Auth.: ORS 652.165

Stats. Implemented: ORS 652.150

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**Administration of the Wage Security Fund**

**839-001-0500**

**Definitions**

As used in OAR 839-001-0500 to 839-001-0560 unless the context requires otherwise:

- (1) "Assets" include real and personal property of whatsoever nature, excluding such property which the employer has a right to claim exempt.
- (2) "Bureau" means Bureau of Labor and Industries.
- (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (4) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.
- (5) "Employee" has the same meaning given it in ORS 652.310(2), except "employee" does not include a principal officer or director of a corporation who is also a stockholder.
- (6) "Employer" has the same meaning given it in ORS 652.310(1).
- (7) "Fringe Benefits" means the amount of compensation which accompanies or is in addition to a person's regular salary or wages and includes, but is not limited to, payment for profit sharing plans, retirement or pension plans, insurance, sick leave, holidays, severance, or vacation.
- (8) "Fund" means the Wage Security Fund established by ORS 652.409(1); income earned on moneys in the Wage Security Fund, as provided for in ORS 652.409(1); amounts recovered by the Commissioner on wage claims paid out of the "Fund"; and amounts of eligible wage claim payments which are disallowed because of the inability to locate the wage claimant.
- (9) "Promptly", as used in OAR 839-001-0500 to 839-001-0560, means the next regular payday established by the employer, or 35 days from the last payday, whichever is sooner.
- (10) "Successor" means one who follows an employer in ownership or control of a business so far as such employer has not paid employees in full. A successor employer may be any successor to the business of any employer, or any lessee or purchaser of any employer's business property for the continuation of the same business.

(11) "Wage Claim" has the same meaning given it in ORS 652.320(9). However, in the case of claims against the Fund, "wage claim" refers to actual wages earned only. It does not include any other item of compensation considered to be a fringe benefit, nor does it include any damages, civil penalties or interest otherwise provided by law.

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 8-1989, f. & cert. ef. 10-12-89; BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0510**

**Eligibility for Wage Payment**

An employee is eligible for the payment of a wage claim from the Fund when the Commissioner makes the following determinations:

- (1) The employer has ceased doing business in Oregon; and
- (2) The employer is without sufficient assets to fully and promptly pay the wage claim at the cessation of doing business; and
- (3) The wage claim cannot otherwise be fully and promptly paid; and
- (4) The wage claim is valid; and
- (5) The amount claimed was earned within 60 days of the date of the cessation of business.

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 8-1989, f. & cert. ef. 10-12-89; BL 9-1993(Temp), f. & cert. ef. 9-13-93; BL 2-1994, f. & cert. ef. 5-27-94; BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0515**

**Matters to be Considered in Making Determinations**

- (1) In determining that an employer has ceased doing business the Commissioner shall consider:
  - (a) Whether the business premises are no longer occupied by the employer;
  - (b) Whether business operations are being conducted;
  - (c) Whether customers of the employer are being served;
  - (d) Whether the employer is employing employees;
  - (e) Any other information indicating whether the business has ceased its operations.
- (2) In determining that an employer is without sufficient assets to fully and promptly pay the wage claim at the cessation of business, the Commissioner shall consider:

- (a) Whether the debts of the employer exceed the total amount of assets;
  - (b) Whether the liquid assets of the employer are not sufficient to pay the wages due;
  - (c) Whether the accounts receivable of the employer are not sufficient to pay the wages due;
  - (d) Whether the claims of a secured creditor on the assets of the employer would exceed the amount due in wages;
  - (e) Whether the employer has filed for protection under the **Bankruptcy Code** (The filing of bankruptcy in and of itself does not determine the insufficiency of assets.);
  - (f) Whether the assets of the employer are in the process of being involuntarily liquidated;
  - (g) Any other information indicating that the assets of the employer are insufficient to promptly pay the wage claim at the cessation of business.
- (3) In determining that a wage claim cannot otherwise be fully and promptly paid the Commissioner shall consider:
- (a) Whether the employee has a right of claim against a bond or deposit held by the employer, which may be used for the purpose of paying wage claims;
  - (b) Whether the business is in receivership and the type of receivership;
  - (c) Whether there is a successor to the employer's business;
  - (d) Any other information indicating that the wage claim cannot otherwise be fully and promptly paid.
- (4) In determining that the wage claim is valid the Commissioner shall consider:
- (a) Whether there is judgment of the court;
  - (b) Whether there is a final administrative order issued pursuant to statute or rule;
  - (c) Whether the employer acknowledges the amount of wages owed;
  - (d) The results of the Division's investigation of the wage claim;
  - (e) Any other information indicating that the wage claim is valid.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 409, OL 1985, Sec. 7(4) (Amended 6/94)

Stats. Implemented: ORS Ch, 409, OL 1985, Sec, & (Amended 6/94)

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86

**839-001-0520**

**Amount of Claim to be Paid**

- (1) Except as provided in section (2) of this rule, after a wage claim is determined to be eligible for payment from the Fund, the amount to be paid shall be the lessor of:
- (a) The amount of wages earned but unpaid up to \$2,000; or

- (b) The amount of wages earned, but unpaid during the 60 day period preceding the date the employer ceased doing business.
- (2) When the amount of a valid wage claim determined to be eligible for payment is greater than the amount available in the Fund for paying such claims, payments on wage claims shall be prorated in accordance with OAR 839-001-0530.

Stat. Auth.: ORS Ch. 409, OL 1985, Sec. 7(4) (Amended 6/94)

Stats. Implemented: ORS Ch. 409, OL 1985, Sec. 7(1) (Amended 6/94)

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86

**839-001-0525**

**Priority of Payments from the Fund**

The Bureau shall pay from or encumber the Fund, on a monthly basis, the administrative and operating expenses incurred while carrying out the provisions of ORS 652.414, and these rules before paying wage claims.

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0530**

**Fund Amount Available for Claim Payment: Prorating Claims When Insufficient Funds are Available**

- (1) When the amount in the Fund is determined to be insufficient to pay in full all accumulated wage claims determined to be eligible for payment, such wage claims will be prorated.
- (2) The computation of prorated amount shall be made according to the following formula:
  - (a) Amount Available for Payments divided by Total Amount of Eligible Wage Claims = Z
  - (b) Eligible Amount of Individual Wage Claim times Z = Prorated Amount to be Paid to Wage Claimant
- (3) Wage claims paid from the Fund on a prorated basis are limited to prorated amount paid, and no employee will be paid any additional amount on the same wage claim from the Fund.

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0550**

**Procedure for Timely and Cost Efficient Method for the Payment of Wages from the Wage Security Fund**

- (1) The Division shall approve or deny payment from the Fund within 30 days of the date the completed wage claim has

been filed or the employer has ceased doing business, whichever is later. At the Division's discretion, the 30 day time period may be extended to 45 days.

(2) Payments from the Fund for wage claims shall be made not less than once in any month.

(3) It is the responsibility of the employee to provide and keep the Division advised of the employee's current mailing address and telephone number and the name, mailing address, and telephone number of another individual who will generally always be able to advise the Division of the employee's whereabouts and current address and phone number.

(4) The Division will mail payments from the Fund to the last known address of the employee as reflected in the Division's records. If the mail is returned, the Division will make one attempt to locate the employee by contacting the individual reflected in the Bureau's records as the person who will generally always know the employee's whereabouts.

(5) If the employee cannot be located within 45 days after the payment was first mailed to the employee's last known current address as reflected in the Division's records, the wage claim shall be disallowed as eligible for payment from the Fund and the amount of the payment shall revert and be irrevocably added back into the Fund.

(6) Notwithstanding the provisions of section (5) of this rule, an employee whose claim has been disallowed because the employee could not be located within the time provided for in section (5) of this rule may refile the wage claim with the Division; provided, however, that such refiled wage claim shall be deemed and treated for all purposes as a newly filed wage claim.

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 9-1996, f. & cert. ef. 10-8-96

**839-001-0560**

**Recovery from Employers**

The Commissioner may perfect a security interest in the personal property of the employer in the amount of the sums paid from the Fund on a wage claim and in an additional amount of the penalty provided for in ORS 652.414(3). Action to perfect a security interest shall be taken in accordance with ORS 652.414(3) and (4).

Stat. Auth.: ORS 652.414(6)

Stats. Implemented: ORS 652.414

Hist.: BL 5-1986, f. 6-20-86, ef. 7-1-86; BL 8-1989, f. & cert. ef. 10-12-89; BL 9-1996, f. & cert. ef. 10-8-96

**Rules Pertaining to Moneys Collected from Employees for Group Health Insurance Coverage and Notification of Various Parties on Termination of Group Health Insurance Coverage**

**839-001-0700**

**Definitions**

As used in ORS 652.710 and in OAR 839-001-0700 to 839-001-0800, unless the context requires otherwise:



- (1) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.
- (2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (3) "Contract" includes a group health insurance policy.
- (4) "Contractor" includes any person who enters into an agreement with an employer to provide health care services to employees. "Contractor" also includes any person who enters into an agreement with an employer to provide insurance coverage pursuant to the terms of a group health insurance policy.
- (5) "Department" means the Department of Insurance and Finance.
- (6) "Employ" includes to suffer or permit to work.
- (7) "Employee" means any individual employed by an employer.
- (8) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.
- (9) "Group Health Insurance Policy" as used in ORS 652.710(3) has the same meaning as that defined in ORS 743.522.
- (10) "Health Care Services" includes services that provide medical and surgical attention, hospital care, x-rays, ambulance, nursing or other related service or care for sickness or injury. Health care services also include services that are provided under the terms of a group health insurance policy.
- (11) "Home Address" means the last known mailing address as recorded in the employer's records.
- (12) "Insurer" as used in ORS 652.710(3) has the same meaning as that defined in ORS 731.106 and includes a contractor as defined in section (4) of this rule.
- (13) "Promptly be Paid" or "Promptly Pay" means that trust funds are paid no later than the date agreed to by the employer and the contractor.
- (14) "Termination" or "Terminated", as used in ORS 652.710(3), means the cessation of coverage on the last day of the period through which coverage is paid up; provided, however, that a group health insurance policy that provides for a grace period for paying premium on the policy terminates on the final day of the grace period. Termination of coverage under a group health insurance policy also includes the amendment or reissuance of a policy to delete one or more classes of certificate holders from coverage.
- (15) "Trust Funds" means all moneys collected by an employer from employees of the employer or moneys retained from the employee's wages for the purposes of providing or furnishing to the employees health care services pursuant to a contract.
- (16) "Violation" means a transgression of any statute or rule or any part thereof and includes both acts and omissions.
- (17) "Working Day" means any day the business of the employer is open for business to its customers or day the employees of the employer are actually working on the employer's business.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**839-001-0710**

**Effective Dates**

- (1) The civil penalty provisions become effective on the following dates:
  - (a) The civil penalty provisions of ORS 652.710 for violations of ORS 652.710(1) are effective September 29, 1991;
  - (b) The civil penalty provisions of ORS 652.710 for violations of ORS 652.710(3) are effective July 1, 1992.
- (2) The notification requirements of ORS 652.710(3) are effective July 1, 1992.
- (3) The provisions of ORS 652.710(1) have been effective since June 14, 1941.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**Termination of Group Health Insurance Coverage**

**839-001-0720**

**Notification of Termination of Group Health Insurance Policy**

- (1) When an employer receives notice from a contractor or insurer who is providing or has provided the employer with a group health insurance policy that the policy is terminated by the insurer and when the employer does not replace the group health insurance coverage with another group health insurance policy, the employer shall notify all employees who were covered under the terminated policy.
- (2) The employer shall notify the employees in writing no later than ten working days from the date the employer has received notice from the contractor or insurer that the group health insurance policy is terminated.
- (3) The employer shall deliver the notice to each employee who was covered by the terminated group health insurance policy as follows:
  - (a) The employer shall deliver the notice to each employee affected in person; or
  - (b) The employer shall deliver the notice to each employee affected by mailing the notice to the employee's home address as recorded in the employer's records.
- (4) If the employer mails the notice, the employer shall complete a certificate of mailing for each notice mailed.
- (5) If the employer delivers the notice in person, the employer shall request the employee to acknowledge in writing that the employee received the notice.
- (6) The notice to employees shall contain the following information:
  - (a) A statement to the effect that the group health insurance policy covering the employees has been terminated;
  - (b) A statement to the effect that the employer will no longer provide group health insurance coverage for its employees;

- (c) The date the termination of the group health insurance policy takes effect;
- (d) An exact and clearly legible copy of the information supplied to the employer by the contractor or insurer pursuant to ORS 743.560.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**839-001-0730**

**Record to be Kept/Availability of Record**

- (1) The employer shall keep and make available for inspection by the Commissioner of the Bureau of Labor and Industries or representatives of the commissioner the following documents:
- (a) A true copy of the notice delivered to employees pursuant to these rules;
  - (b) If the notice was mailed, the certificate of mailing for each employee to whom a notice was mailed;
  - (c) If the notice was distributed in person, a written acknowledgement, signed by the employee, that the employee received the notice.
- (2) The documents required to be kept in section (1) of this rule shall be maintained for a period of two years from the date the notice was delivered.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**839-001-0740**

**Employee Notification Form**

- (1) For purposes of complying in ORS 652.710(3) and OAR 839-001-0720, there is no specific form required. The document used by the employer to notify its employees must contain all the information provided for in OAR 839-001-0720(6).
- (2) When the form supplied to the employer by the contractor or insurer contains the required information and when an exact and clearly legible copy of the form is delivered to employees within the time required in ORS 652.710(3) and OAR 839-001-0720(3), the notification requirements are satisfied.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

## **839-001-0750**

### **Employer Notification Form**

ORS 743.560(1) requires the Commissioner of the Bureau of Labor and Industries and the Director of the Department of Insurance and Finance to establish the form of the notice that an insurer is to send to the employer. The notice is established in OAR 836-052-0860, administrative rules of the Department of Insurance and Finance, Insurance Division, and reflects the agreement of the two agencies.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

### **Civil Penalty for Violation of ORS 652.710(10) and (3) -- Moneys Collected from Employees for Group Health Insurance Coverage and Notification of Various Parties on Termination of Group Health Insurance Coverage**

## **839-001-0760**

### **Violations Separate and Distinct**

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 183.090 & 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

## **839-001-0770**

### **Violations for Which a Civil Penalty May be Assessed**

Pursuant to ORS 652.710(4), the Commissioner may assess a civil penalty for violations of ORS 652.710(1) and (3) as follows:

(1) Violations of ORS 652.710(1):

- (a) Failure of the employer to keep trust funds in accounts separate of other accounts maintained by the employer;
- (b) Failure of the employer to promptly pay the trust funds over to the contractor pursuant to a contract for health care services;
- (c) Allowing trust funds to become part of the employer's assets.

(2) Violations of ORS 652.710(3):

- (a) Failure to deliver the notification required in ORS 652.710(3) to each employee covered by the terminated group health insurance policy in person or by delivering the notice by mail to the employee's home address;

- (b) Failure to deliver the notice no later than ten (10) working days to each employee after the employer has received notice from the contractor or insurer pursuant to ORS 743.560;
- (c) Failure to provide in the notice to each employee the information required in OAR 839-001-0720(6).

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 183.090 & 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**839-001-0780**

**Criteria for Determining a Civil Penalty**

- (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) Whether the employers' 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 evidence of all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth.: ORS 652.710(7) & (11) & Ch. 673

Stats. Implemented: ORS 183.090 & 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**839-001-0790**

**Schedule of Civil Penalties for Violation of ORS 652.710(1)**

- (1) The civil penalty for any one violation 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) When the Commissioner determines to assess a civil penalty for violation(s) of ORS 652.710(1), the minimum civil penalty to be assessed shall be \$50 for each employee affected; provided, however, that if the violation(s) of ORS 652.710(1) result(s) in a lapse of health care insurance coverage or otherwise in the unavailability of health care services through the employer's contract, the minimum civil penalty to be assessed shall be \$500 for each employee affected.

(3) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-001-0780.

(4) When the Commissioner determines to assess a civil penalty for any violation of ORS 652.710(1) by an employer who has previously been assessed a civil penalty for violation of ORS 652.710(1), the minimum civil penalty shall be as follows:

- (a) For a second offense, double the amounts specified in sections (2) and (3) of this rule;
- (b) For third and subsequent offenses, \$1,000 for each violation.

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

Stat. Auth.: ORS 652.710(7) & (11)

Stats. Implemented: ORS 183.090 & 652.710

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

**839-001-0800**

**Schedule of Civil Penalties for Violation of ORS 652.710(3)**

(1) The civil penalties for any one violation 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) When the Commissioner determines to assess a civil penalty for violation(s) of ORS 652.710(3), if delivery of notice satisfying the requirements of ORS 652.710(3) occurred no later than three working days prior to the date upon which employee rights to conversion coverage terminate, a minimum civil penalty of \$50 per employee shall be assessed. However, if delivery of notice as required by ORS 652.710(3) is not made at least three days prior to the expiration of conversion rights, a minimum civil penalty of \$500 per employee shall be assessed.

(3) When the Commissioner determines to assess a civil penalty for the failure to provide all required information in the notice, a minimum civil penalty of \$25 per employee for each notice not containing the required information.

(4) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-001-0780.

(5) When the Commissioner determines to assess a civil penalty for any violation of ORS 652.710(3) by an employer who has previously been assessed a civil penalty for violation of ORS 652.710(3), the minimum civil penalty shall be as follows:

- (a) For a second offense, double the amounts specified in sections (2), (3), and (4) of this rule;
- (b) For third and subsequent offenses, \$1,000 for each violation.

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

Stat. Auth.: ORS 652.710(11)

Stats. Implemented: ORS

Hist.: BL 10-1992, f. & cert. ef. 7-1-92

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**Oregon Administrative Rules  
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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 2**

**PROCEDURAL RULES**

**839-002-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment or repeal of any rule for the Civil Rights Division of the Bureau of Labor and Industries, the Civil Rights Division shall give notice of intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the rule's effective date.
- (2) By mailing a copy of the notice of intended action to persons on the Civil Rights Division mailing list established pursuant to ORS 183.335(7).
- (3) By mailing or furnishing a copy of the notice of intended action to:
  - (a) Associated Press;
  - (b) Portland Observer;
  - (c) The Oregonian;
  - (d) Willamette Week;
  - (e) American Civil Liberties Union;
  - (f) Multnomah County Legal Aid Service;
  - (g) Occupational Safety and Health Administration (OSHA), United States Department of Labor;
  - (h) Oregon Legal Services Corporation.

Stat. Auth.: ORS Ch.183

Stats. Implemented: ORS 659

Hist.: BL 5-1980, f. & ef. 8-4-80; BL 4-1996, f. & cert. ef. 3-12-96



839-002-0005

Model Rules of Procedure

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, effective September 9, 1995 are hereby adopted by reference as permanent rules of the Civil Rights Division of the Bureau of Labor and Industries except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of statutes administered and enforced by the Civil Rights Division. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 659

Hist.: BL 5-1980, f. & ef. 8-4-80; BL 2-1981, f. & ef. 1-8-81; BL 3-1982, f. & ef. 2-9-82; BL 4-1996, f. & cert. ef. 3-12-96

839-002-0010

Definitions

The Civil Rights Division of the Bureau of Labor and Industries will use the definitions found in OAR 839-003-0005 throughout these rules unless the context requires otherwise or the term is specifically redefined. Terms which apply only to a particular division of these rules will be defined within that particular division.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS Ch. 183

Hist.: BL 13-1981, f. & ef. 11-18-81

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 3**

**COMPLAINT PROCEDURES**

**839-003-0000**

**Purpose and Scope**

- (1) These rules will govern the complaint procedures of the Civil Rights Division for all complaints filed with the Division on or after the effective date of these rules.
- (2) In any matter that arises which is not governed by these rules, the Commissioner will exercise discretion under the law. If any provision or term of these rules, or an amendment to them, is ruled invalid, the remaining provisions will continue in full force and effect.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0005**

**Definitions**

- Except where otherwise required by ORS 654.005 and except as provided below, definitions for terms used in these rules are found in ORS 659.010 and 659.400:
- (1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the Administrator.
  - (2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the Commissioner.
  - (3) "Complaint" means for the purpose of ORS Chapter 659, a written, notarized statement signed by the Complainant which:
    - (a) Gives the name and address of the Complainant and the Respondent;

- (b) Identifies the protected class basis of the complaint;
- (c) Describes the actions complained of, including:
  - (A) The date(s) of occurrence;
  - (B) What the action was and how it harmed the Complainant;
  - (C) The causal connection between Complainant's protected class and the alleged harm.
- (4) "Complainant" means a person who files a complaint personally or through an attorney.
- (5) "Days," unless otherwise stated in the text, means calendar days; "work days" means Monday through Friday, excepting holidays officially recognized by the State of Oregon.
- (6) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.
- (7) "Notice" means written information sent by mail to the person's last known personal or business address or business address of the person's designated representative or delivered personally.
- (8) "Protected class" means a group of people who are protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.
- (9) "Substantial Evidence" means such proof as a reasonable person would accept as sufficient to support the allegations of the complaint.
- (10) "Substantial Evidence Determination" means the Division's written findings of Substantial Evidence.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96

## **839-003-0010**

### **Who May File**

- (1) Any person claiming to be harmed by an act prohibited by statutes enforced by the Civil Rights Division may file a complaint with the Division personally or through an attorney.
- (2) Any employee, or a representative authorized to do so by ORS 654.062(2), may file a complaint with the Division alleging a violation of ORS 654.062(5).
- (3) The Commissioner or Attorney General may file a complaint whenever there is reason to believe that a person or entity has violated statutes enforced by the Division.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 7-1982, f. & ef. 4-22-82; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0015**

**Equal Employment Opportunity Commission**

When a complaint is filed alleging employment discrimination in violation of state law, the Division will process the complaint. If the complaint alleges facts which would also violate federal discrimination statutes administered by the Equal Employment Opportunity Commission (hereafter EEOC), the Division may accept it on behalf of EEOC, if it meets federal filing requirements, and will forward it to EEOC. Under a work-sharing agreement between the Division and EEOC the Division, in most instances, will process the complaint for both agencies.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS 659.040

Hist.: BL 7-1981, f. & ef. 6-25-81

**839-003-0020**

**Civil Suit**

(1) Instead of filing a complaint with the Division, a person who alleges unlawful discrimination may file a civil suit as provided in ORS 659.121 or ORS 30.680. A person who files a civil suit as provided in ORS 659.121 or ORS 30.680 may not later file a complaint with the Division which makes the same allegations made in that civil suit.

(2) After filing a complaint with the Division, a Complainant may file a civil suit in state or federal court. The Complainant should notify the Division of the filing of the civil suit. If this civil suit arises from the same set of facts as the complaint, the Division will dismiss the complaint. The Division will notify both the Complainant and Respondent that it has dismissed the complaint and will take no further action.

(3) The Commissioner will notify the Complainant of the right to file suit as provided in ORS 659.121 when a complaint is dismissed by the Division or on the one year anniversary of the filing of the complaint, whichever comes first. The Complainant will have 90 days from the mailing of the notice to file a civil suit. To sue a public employer, a tort claim notice must be appropriately filed. Processing of the complaint does not toll the time requirements to file a civil suit.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659.

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 12-1982, f. & ef. 8-10-82; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0025**

**Filing a Complaint**

(1) Except as provided in section (2) of this rule, a complaint must be filed with the Division within one year of notice to the Complainant of the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the complaint is filed within one year of the last date of occurrence.

(2) A person alleging discrimination for reporting or opposing unsafe or unhealthful work conditions (ORS 654.062) must contact the Division within 30 days of the date of the alleged unlawful practice. However, where extenuating circumstances exist, the Administrator may extend the 30 day period as provided in **29 CFR 1977.15(d)(3)**.

- (3) The procedures for filing a complaint are as follows:
- (a) A person makes an inquiry to the Division;
  - (b) If the Division determines that the person has a basis for filing a complaint, a complaint will be drafted and sent to the person.
  - (c) The person will review the complaint and have it signed and notarized. The Division will provide notary service if needed.
  - (d) If the person is an unemancipated minor the complaint will also be signed by the minor's parent or legal guardian.
- (4) A person or the person's attorney may file a complaint with the Division if it meets the standards in OAR 839-003-0005(3).
- (5) The filing date is the date the Division receives the complaint which meets the standards contained in OAR 839-003-0005(3).

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0030**

**Where to File**

A complaint may be filed with the Division at any Bureau office in person or by mail.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0035**

**Notice to Respondent**

The Division will send a notice of the filing of a complaint with a copy of the complaint to the Respondent within 30 days of the date a complaint is filed.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0040**

**Amendment**

- (1) The Division may amend a complaint to correct technical defects on its own initiative or at the request of the Complainant with the agreement of the Division any time prior to the issuance of specific charges. Examples of technical defects include: clerical errors, addition or deletion of Respondents and errors in citation of statutes.
- (2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, a new complaint meeting the standards provided in OAR 839-003-0005(3) must be filed.
- (3) Amended complaints need not be signed or notarized.
- (4) The Division will send a copy of the amended complaint to the Complainant and the Respondent.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0045**

**Withdrawal of Complaint**

A Complainant may voluntarily withdraw a complaint at any time giving the Division written notice of the decision to withdraw. If the Complainant wants a federal "right to sue letter," the Complainant shall make a written request to EEOC or to the Division. If the request is made to the Division, the Division will forward the request to EEOC.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0050**

**Administrative Dismissal**

- (1) The Division will dismiss the complaint if it determines that the Bureau has no jurisdiction over the allegations of the complaint. The Division may dismiss the complaint if a proceeding based on the same set of facts is commenced with another agency.
- (2) If a Complainant or the Complainant's attorney fails to cooperate with the Division, the complaint may be dismissed.
- (3) The Complainant will notify the Division in writing of any change in address and telephone number. When a Complainant cannot be located by reasonable efforts, the Division may dismiss the complaint.
- (4) The Division will dismiss the complaint unless substantial evidence of unlawful discrimination is found.
- (5) Such notice of dismissal will include a statement that the complaint has been dismissed and a notice of Complainant's right to file a civil suit as provided for in ORS 659.121 and ORS 30.680, if such right exists.
- (6) The Division will dismiss complaints subject to OAR 839-003-0015 in accordance with federal requirements.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0055**

**Conciliation Agreement Procedures**

(1) The Division encourages Complainants and Respondents to resolve complaints by mutual agreement at any time. The Division will attempt to facilitate settlement between them. The Division will not, however, permit these negotiations to become so lengthy that they defeat the overall purpose of the statutes enforced by the Division.

(2) If the Complainant and the Respondent agree upon settlement, a Division representative will draft a conciliation agreement. The agreement will state:

- (a) That a "no fault" settlement has been reached;
- (b) That the Complainant, the Respondent and the Civil Rights Division accept the terms of the agreement as a resolution of the complaint;
- (c) The specific action(s) the Complainant and Respondent will take in settlement of the complaint and the time within which the action(s) will be taken; and
- (d) That the Division may investigate any alleged breaches of the agreement.

(3) The conciliation agreement shall not include release language that applies to any forum other than the Civil Rights Division.

(4) The Division may allow the Complainant and the Respondent to include a private agreement with release language in addition to the Division' agreement. The Division will not be a party to nor will it enforce private agreements.

(5) The Complainant, the Respondent and a representative of the Division will sign the conciliation agreement. The Complainant and the Respondent will receive copies of the signed agreement. Upon execution of this agreement, the Division will dismiss the complaint and notify the Complainant and the Respondent.

(6) Nothing in these rules is intended to preclude private settlement between the Complainant and the Respondent

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0060**

**Fact Finding Conference**

(1) At its discretion, the Division may hold a fact finding conference. This conference may be part or all of the Division's investigation of the complaint. The Complainant and the Respondent will attend the conference and a Division representative will conduct the conference. The purpose of the conference will be:

- (a) To review evidence regarding the complaint;

- (b) To identify the undisputed elements of the complaint;
- (c) To define and, if possible, resolve the disputed elements of the complaint;
- (d) To attempt to settle the complaint.

(2) A Division representative will schedule the conference, notifying both the Complainant and the Respondent of the time and place. The Division representative may require the Complainant and the Respondent to provide information and documents relevant to the complaint. The Division may issue subpoenas ad testificandum to compel the Respondent's representatives to attend the conference and issue subpoenas duces tecum to compel the production of documents at the conference.

(3) The conference may be rescheduled, subject to the Division's approval, at the request of either the Complainant or the Respondent, or at the Division's discretion.

(4) Complainant's failure to attend the conference may cause the complaint to be administratively dismissed if the Division determines that the Complainant has failed to cooperate pursuant to OAR 839-003-0050.

(5) The Respondent's representatives should include:

- (a) A person or persons with knowledge of the facts bearing on the complaint; and
- (b) A person with authority to negotiate a settlement agreement.

(6) The Complainant and the Respondent may be accompanied by counsel, but counsel's role is strictly limited to providing legal advice to counsel's client.

(7) The Division's representative conducting the conference may:

- (a) Question the participants as to their knowledge of the situation;
- (b) Ask for additional statements and documentation from the Complainant and the Respondent;
- (c) Terminate discussion of a particular point when further discussion would be irrelevant or repetitive;
- (d) Exclude witnesses with the exception of the Complainant, the Respondent and counsel.
- (e) Order unruly participants to leave the conference;
- (f) Tape-record the conference;
- (g) Attempt to negotiate a conciliation agreement between the parties;
- (h) Recess or terminate the conference at any time.

(8) If the conference does not result in settlement, the Division will either continue the investigation or dismiss the complaint.

(9) If the Complainant attends the conference and the Respondent's representatives fail to attend after being subpoenaed under section (2) of this rule, the Division representative may proceed based on the information in the Division's possession.

Stat. Auth.: ORS 659.100(4) & 659.103

Stats. Implemented: ORS Ch. 659



Hist.: BL 7-1981, f. & ef. 6-25-81; BL 1-1993, f. 3-25-93, cert. ef. 4-1-93; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0065**

**Investigations**

- (1) The Division may investigate the allegations contained in the complaint. The purpose of this investigation is to determine objectively whether or not there is substantial evidence of unlawful discrimination. The Division will determine the method by which it will investigate or otherwise process complaints. The Division will not investigate allegations occurring more than one year prior to the date the complaint was filed but may investigate circumstances, regardless of the one year period, that pertain to timely allegations.
- (2) The investigation may include interviews with the Complainant, the Respondent, and any other persons whom the Division chooses to interview. The investigation may also involve the examination and analysis of written documents.
- (3) The investigator may tape record statements.
- (4) Respondent has the right to have a representative present during interviews of current supervisory employees. Upon request to the Division by a current or former employee, Respondent's representative may be present.
- (5) Upon request, the Division will provide Complainants, Respondents or witnesses a copy of any report of their own interview. The Division may request that the Complainant, the Respondent or the witness confirm by signature that the written report is an accurate representation of the statement. The Complainant, the Respondent or the witness may submit additional comments regarding the statement to the Division.
- (6) The investigator may make written request to the Respondent for documents, records, files, or other sources of evidence. The Respondent will provide such information within 21 days of the date of the investigator's written request. The investigator may grant Respondent additional time in which to respond.

Stat. Auth.: ORS Ch. 183 & 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 13-1981, f. & ef. 11-18-81; BL 12-1982, f. & ef. 8-10-82; BL 12-1992(Temp), f. & cert. ef. 11-3-92; BL 2-1993, f. 3-25-93, cert. ef. 4-1-93; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0070**

**Conciliation**

If the Division finds substantial evidence of unlawful discrimination, a representative of the Division may seek to eliminate the effects of the unlawful discriminatory act(s) by conference, conciliation, and persuasion. The Division will facilitate settlement negotiations between the Complainant and the Respondent as provided in OAR 839-003-0055.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659.

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0075**

**Failure of Conciliation Process**

- (1) Where no conciliation agreement is reached after a Substantial Evidence Determination the Division may, at its own discretion, proceed with the contested case process. The Division may dismiss the complaint at any time.
- (2) The Complainant may withdraw the complaint at any time.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659.

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0080**

**Access to Records/Confidentiality**

- (1) During the investigation, the contents of the investigative file and related records, other than the complaint, are confidential. However, any individual may inspect and copy information or statements that individual has given to the Division.
- (2) After the complaint is closed, a copy of the closed file will be available for a fee subject to the State of Oregon's public disclosure law. To obtain a copy of a closed file a person will make a written request to the Division. The request must include the person's name, address, and telephone number, the Complainant's and the Respondent's names and the fee.
- (3) The Division will not at any time disclose any information which is required to be kept confidential under any contractual agreement between the Bureau of Labor and Industries and federal, state and local agencies.
- (4) Nothing that is discussed, proposed or offered respecting terms of settlement through informal procedures of conference, conciliation, or persuasion may be made public by the Division, its officials or employees. This provision does not apply to such disclosures to representatives of federal, state or local agencies as are appropriate or necessary to carry out the Bureau's function under ORS Chapter 659 and under other statutes.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 10-1984(Temp), f. & ef. 9-6-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0085**

**Subpoenas**

- (1) The Commissioner or the designee of the Commissioner may issue a subpoena to require:
  - (a) The attendance and testimony of witnesses;
  - (b) The production of evidence, including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed; and
  - (c) Access to evidence to be examined or copied.

(2) If any person fails to comply with a subpoena issued under this rule, the Commissioner may initiate the legal procedures necessary to enforce compliance.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0090**

**Remedy**

- (1) Remedy is that which eliminates the effect of an alleged unlawful practice. Such remedy may include, but is not limited to:
- (a) In cases of discrimination in employment: employment or re-employment; wages or other benefits lost due to the practice; directly related out-of-pocket expenses attributable to the practice; compensation for emotional distress and impaired personal dignity; and interest;
  - (b) In cases of discrimination in housing or by places of public accommodation: a rental, lease or sale of real property; the service lost; directly related expenses or lost benefits attributable to the practice; compensation for emotional distress and for impaired dignity; and interest.
- (2) Settlements of complaints and the awards in Commissioner's Orders do not necessarily include all possible remedies named above. Nothing in this rule will be construed to limit or alter the statutory powers of the Commissioner to protect the rights of persons similarly situated to the Complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.
- (3) When the Respondent makes an offer of remedy, the Division will inform Complainant of the offer. If the Complainant does not accept an offer which the Division has determined will eliminate the effects of the unlawful practice, the Division may close the complaint.
- (4) In addition, the Commissioner may issue an order addressed to the Respondent to eliminate the effects of any unlawful practice found, and may require Respondent to:
- (a) Perform an act or series of acts designated therein and reasonably calculated to carry out the policy of these rules, and eliminate the effects of an unlawful practice found and protect the rights of those affected thereby;
  - (b) Take action and submit reports to the Commissioner on the manner of compliance with the terms and conditions specified in the Commissioner's order or agreement;
  - (c) Refrain from any action prohibited by the order or agreement which would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules.
- (5) Enforcement: Any agreement or order issued by the Commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS Ch. 659.103

Stats. Implemented: ORS 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0095**

**Monitoring**

(1) The Division may review the provisions of conciliation agreements and orders to insure that the terms are being met. Such reviews may be conducted as a result of an alleged breach of the conciliation or order. The Division may take corrective action.

(2) Any person who has reason to believe that the terms of a conciliation or order have been breached will notify the Division in writing. Such notification will indicate which terms were breached and how they were breached in as much detail as possible.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1981, f. & ef. 6-25-81; BL 4-1996, f. & cert. ef. 3-12-96

**Complaint Procedures: Commissioner's Complaint**

**839-003-0100**

**Statement of Purpose**

(1) It is declared to be the policy of the Commissioner of the Bureau of Labor and Industries that all citizens of the State of Oregon have a right to employment, housing, public accommodation, and private vocational, professional or trade schools without unlawful discrimination.

(2) In order to assure these civil rights, the Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the Commissioner has reason to believe that any group of persons, or any individual, has been denied any such rights. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0005.

Stat. Auth.: ORS Ch 183 & 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 7-1985(Temp), f. & ef. 10-17-85; BL 11-1986, f. & ef. 10-29-86; BL 4-1996, f. & cert. ef. 3-12-96

**839-003-0120**

**Concurrent Complaints**

Nothing in these rules shall be construed:

(1) To either require or prohibit a Commissioner's complaint involving the same or similar issues or allegations stated in any complaint filed with the Commissioner or the Circuit Court by an individual under ORS 659.040, 659.045, or 659.121;

(2) To either require or prohibit the continued processing or initiation of a Commissioner's complaint in the event that a

complaint filed with the Commissioner or the Circuit Court by an individual under ORS 659.040, 659.045, or 659.121, is resolved or dismissed, with or without remedy to the individual; or

(3) To alter or limit the private right of action provided to individuals in ORS 659.121 and/or 659.095.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.040

Hist.: BL 7-1985, f. & ef. 10-17-85; BL 11-1986, f. & ef. 10-29-86

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 5**

**SUBSTANTIVE RULES: INTRODUCTION**

**839-005-0000**

**General Statement of Purpose and Scope**

(1) The purpose of these rules is to implement and interpret the civil rights statutes enforced by the Bureau of Labor and Industries through its Civil Rights Division. The purpose of this part of the rules is to describe the Division's general approach to the enforcement of civil rights statutes. The next four divisions of these rules will contain the substantive rules which implement and interpret specific civil rights statutes.

(2) These rules apply to all inquiries and complaints received by the Division on or after the effective date of these rules.

Stat. Auth.: ORS 659.103

Stats Implemented: ORS Ch. 659

Hist.: BL 9-1982, f. & ef. 6-11-8; BL 4-1996, f. & cert. ef. 3-12-96

**839-005-0005**

**Unlawful Discrimination**

(1) In general, to discriminate means to make distinction between individuals or groups based on common characteristics, real or perceived. Certain kinds of discrimination are unlawful. Oregon civil rights laws forbid making decisions in employment, housing, public accommodations and career schools because an individual is a member of a class protected by these statutes.

(2) When an individual files a complaint with the Division alleging unlawful discrimination, the Division must determine whether substantial evidence of such discrimination exists.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96

## 839-005-0010

### Discrimination Theories

(1) Substantial evidence of intentional unlawful discrimination exists if the Division's investigation discovers proof of the following four elements:

- (a) The Respondent is a Respondent as defined by statute;
- (b) The Complainant is a member of a protected class;
- (c) The Complainant was harmed by an action of the Respondent;
- (d) The Respondent's action was taken because of the Complainant's protected class.

(2) The Division's investigation usually focuses on the fourth element: whether the causal connection links the Respondent's action to the Complainant's protected class membership. In determining the causal connection, the Division uses whichever of the following two tests applies to the facts which the Division's investigation has found to be true:

(a) **Specific Intent Test:** the Respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class. Unless the Respondent can show that an exception to the law allows its action, the Respondent has unlawfully discriminated.

(b) **Different or Unequal Treatment Test:** the Respondent treats members of a protected class differently than others who are not members of the protected class. When the Respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory factors, unlawful discrimination exists.

(3) Harassment on the basis of protected class is an unlawful employment practice if the employer knew or should have known both of the harassment and that it was unwelcome. Unwelcome conduct of a verbal or physical nature relating to an employee's protected class is unlawful when such conduct is directed toward an individual because of the individual's protected class, and:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;
- (d) The standard for determining harassment will be what a reasonable person would conclude if placed in the circumstances of the person alleging harassment;
- (e) In cases of sexual harassment see also OAR 839-007-0550(4).

(4) Harassment on the basis of protected class is also an unlawful practice in housing and public accommodations using the same standards as in OAR 839-005-0010(3).

(5) The Complainant has the burden of proving that protected class membership was the reason for the Respondent's alleged unlawful action. The Complainant begins this process by showing harm because of an action of the Respondent under circumstances which make it appear that the Respondent treated the Complainant differently than comparably

situated individuals who were not members of the Complainant's protected class. The Respondent must then rebut this showing. If the Respondent fails to rebut this showing, the Division will conclude that substantial evidence of unlawful discrimination exists. If the Respondent does rebut the showing, the Complainant may then show that the Respondent's reasons are a pretext for discrimination.

(6) Constructive discharge occurs when an employee leaves employment because of unlawful discrimination under conditions where the employer knew or should have known that a reasonable person subjected to the same conditions would terminate employment.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96

**839-005-0015**

**Necessary Degree of Causality**

Frequently, the evidence indicates that several factors contribute to causing the Respondent's action, of which only one factor is the Complainant's protected class. The Division will apply the mixed motive analysis to determine whether the Complainant's protected class membership played so substantial a part in the Respondent's action to be said to have "caused" that action. Under this analysis, the Complainant's protected class membership does not have to be the sole cause of the Respondent's action but must have played a substantial role in the Respondent's action at the time action was taken. A Respondent must prove that it would have made the same decision even if it had not taken Complainant's protected class into account.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96

**839-005-0025**

**Bona Fide Occupational Qualification (BFOQ) and Affirmative Action Plan Exceptions**

BFOQ:

- (1) ORS 659.030 (a) provides an exception to the prohibition against discrimination in employment. When this discrimination is based on a BFOQ, it is not unlawful. To prove a BFOQ, the Respondent must show that:
- (a) The BFOQ is reasonably necessary to the normal operation of the business;
  - (b) A factual basis exists for believing that all or substantially all individuals in the protected class adversely affected by the BFOQ would be unable to perform safely and efficiently the tasks required in the job; or
  - (c) It is impossible or highly impractical to screen applicants on an individual basis.
  - (d) An employer cannot claim a BFOQ for such reasons as:
    - (A) Customer, co-worker or employer preference;



(B) Stereotypes or assumed characteristics of a protected class.

(2) Affirmative Action Plans: When discrimination is based on a bona fide voluntary affirmative action plan, it is not unlawful if the plan:

- (a) Is a temporary measure;
- (b) Has the purpose of eliminating the effects of past discrimination; and
- (c) Does not unnecessarily trammel the interests of other protected classes.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1982, f. & ef. 6-11-82; BL 4-1996, f. & cert. ef. 3-12-96

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 6**

**SUBSTANTIVE RULES**

**Opposition to Health and Safety Hazards**

**839-006-0000**

**Statement of Purpose**

The Oregon Safe Employment Act (OSEA): ORS Chapter 654 recognizes the right of employees to have a safe and healthful place in which to work. The Act encourages the active but orderly participation of employees in making the workplace safe and healthful. The Act provides protection to employees who so participate by prohibiting discrimination, in any form, against them because of their complaint about or opposition to health and safety hazards. The Bureau is responsible for enforcing the prohibitions against discrimination contained in ORS 654.062(5). The Bureau does this through its Civil Rights Division. The purpose of this part of these rules is to make available in one place the interpretations of ORS 654.062(5) which guide the Division in implementing this statute.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 5-1982, f. & ef. 3-12-82; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0005**

**General Requirements of ORS 654.062(5)**

- (1) ORS 654.062(5) of the Oregon Safe Employment Act (OSEA) generally provides that no person can refuse to hire a prospective employee, discharge an employee, or otherwise discriminate against an employee or prospective employee in compensation, terms, conditions, or privileges of employment because that employee or prospective employee:
- (a) Opposed any practice forbidden by OSEA;
  - (b) Made any complaint under or related to OSEA;

- (c) Instituted or caused to be instituted any proceeding under or related to OSEA;
  - (d) Testified or is about to testify in any such proceeding; or
  - (e) Exercised, on behalf of the employee, other employees or prospective employees any right afforded by OSEA.
- (2) Volunteers covered by Oregon Workers' Compensation are protected by OSEA.
- (3) ORS 654.062(5) also provides that employees or prospective employees who have reason to believe that they may have been discriminated against can file a complaint with the Civil Rights Division (See OAR 839-003-0025 Filing a Complaint).
- (4) Anyone intending to file a complaint may do so by contacting the Civil Rights Division within 30 days of the alleged discriminatory act.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 5-1982, f. & ef. 3-12-82; BL 4-1996, f. & cert. ef. 3-12-96

## 839-006-0010

### Persons Prohibited From Discriminating

ORS 654.062(5) states "it is an unlawful employment practice for any person to bar or discharge from employment...". ORS 654.005(7) defines 'person' as "one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons, and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations or subdivisions". Therefore, the prohibitions of ORS 654.062(5) are not limited to actions taken by employers against their own employees. The prohibitions also include actions taken against an employee or prospective employee by unions, employment agencies, or any other person(s) in a position to discriminate against an employee or prospective employee of another person.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 5-1982, f. & ef. 3-12-82; BL 4-1996, f. & cert. ef. 3-12-96

## 839-006-0015

### Persons Protected by ORS 654.062(5)

(1) ORS 654.062(5) protects the specific employee or prospective employee who exercises rights under the Act. Such employees are protected whether they exercise these rights on their own behalf or on the behalf of other employees or prospective employees. Employees or prospective employees on whose behalf another employee or person acts are also protected if:

- (a) They are perceived to be complaining about or opposing an unsafe or unhealthy workplace; or
- (b) The complaint was, in fact, theirs but was made by someone else.

(2) If a complaint has been made, but the employer does not know who complained and the employer retaliates against the employee(s) whom the employer perceives to have complained, or against all employees who may have complained, the employee(s) is protected under ORS 654.062(5).

Stat. Auth.: ORS Ch. 659.103

Stats. Implemented: ORS 654 & 659

Hist.: BL 5-1982, f. & ef. 3-12-82; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0020**

**Opposition to Practices**

(1) ORS 654.062(5) prohibits discrimination against an employee because the employee "opposed" health and safety hazards in the workplace. OSEA does not specify to whom or in what manner an employee can oppose health and safety hazards and be protected. Therefore, what constitutes opposition covers a broad range of activities. For example, an employee may oppose health and safety hazards in a discussion with co-workers which is overheard by management, in a letter to a newspaper read by management or by written protest given to the employer. The concern of ORS 654.062(5) is not with how the opposition is made but with the employer's reaction to the opposition.

(2) Although OSEA does not specify the manner of opposition, the protection of ORS 654.062(5) does not cover an employee who opposes health and safety hazards by refusing to work or by walking off the job, except where an employee may be confronted with a choice of either refusing to do assigned tasks or risking serious injury or death because of a hazardous condition at the workplace, not inherent in the job.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 5-1982, f. & ef. 3-12-82; BL 4-1996, f. & cert. ef. 3-12-96

**Injured Workers: Prohibited Discrimination (ORS 659.410) and Reinstatement/Reemployment Rights (ORS 659.415 and 659.420)**

**839-006-0100**

**Purpose and Scope**

The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 659.410 - 659.420 which prohibit discrimination against those who use the Workers' Compensation statutes and provide specific reinstatement and reemployment requirements. These rules apply to all complaints and inquiries relating to ORS 659.410 - 659.420 received on or after the effective date of these rules.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0105**

**Definitions**

As used in these rules unless the context requires otherwise:

- (1) "Demand" means the injured worker informs the employer that the worker seeks reinstatement/reemployment.
- (2) "Invoke" for the purposes of ORS 659.410 includes a worker's reporting of an on-the-job injury or a perception by the employer that the worker has been injured on the job or will report an injury.
- (3)(a) "Physician" means a person duly licensed to practice medicine or osteopathy. "Physician" also includes a chiropractor for up to 30 days from the date of the injured worker's first visit on a claim or for 12 visits, whichever occurs first;
- (b) "Attending Physician" means a physician who is primarily responsible for the treatment of a worker's compensable injury. (ORS 656.005(12)).
- (4)(a) "Worker" means any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations but does not include any person whose services are performed as an inmate or ward of a state institution. (ORS 656.005(23));
- (b) For purposes of ORS 659.410, a worker also includes an applicant for a job with an employer who is subject to the Oregon Workers' Compensation Statutes;
- (5) "Injured Worker" means a worker who has had a compensable injury as determined by acceptance of the claim under the Oregon Workers' Compensation Statutes. A worker whose claim has been deferred is not an injured worker. A worker hired on a temporary basis as a replacement for an injured worker, a seasonal worker hired for and actually employed for less than six months in a calendar year or a worker working short terms of employment out of a hiring hall operating pursuant to a collective bargaining agreement is not an "injured worker".
- (6) "Supervisor" means a person who exercises direct supervisory authority over the position.
- (7) As used in these rules the terms "disabled", "physically able" and "physical ability" include mental, emotional and psychological conditions. Example: Job related stress.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0115**

**Employers Covered by ORS 659.410 - 659.420**

- (1) Employers covered by ORS 659.410 and 659.420 are those "who employ six or more persons." "Employ six or more persons" means that an employer has employed at least six employees in Oregon on a full-time, part-time or seasonal basis either:
  - (a) At the time of the compensable injury; or

(b) At the time of the injured worker's demand under ORS 659.420; or

(c) At the time of the discriminatory act alleged under ORS 659.410.

(2) Employers covered by ORS 659.415 are those employing 21 or more workers at the time of the worker's injury or at the time of the worker's demand for reinstatement.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659 & 654

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96; BL 10-1996, f. & cert. ef. 12-4-96

**839-006-0120**

**Persons Protected by ORS 659.410 -- 659.420**

To be protected under ORS 659.410, a person must be a worker as defined in OAR 839-006-0105(4)(a). To have rights under ORS 659.415 and 659.420, a person must be an injured worker as defined in OAR 839-006-0105(5).

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0121**

**Procedures Regarding Violation of ORS 659.410 -- 659.420**

A worker or injured worker, as defined in these rules, who claims a violation of ORS 659.410, 659.415, or 659.420, may file a complaint with the Civil Rights Division (see OAR 839-003-0025 - Filing a Complaint).

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 654 & 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0125**

**Employers' Responsibilities Under ORS 659.410**

An employer may not discriminate against a worker who is protected under ORS 659.410 because the worker is injured on the job, applies for benefits, in other ways invokes or uses the Oregon Workers' Compensation system, has given or is about to give testimony in connection with the Oregon Workers' Compensation procedures or civil procedures pursuant to ORS 659.410, 659.415 and 659.420.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS 659.654

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 4-1996, f. & cert. ef. 3-12-96

## 839-006-0130

### Injured Worker and Employer Responsibilities Under ORS 659.415

(1) An employer with 21 or more employees at the time of injury or at the time of demand is required to reinstate an injured worker to the injured worker's former position if:

(a) The former job still exists; and

(b) The injured worker is physically able to perform the duties of the former position.

(2) If the former position has been eliminated for bona fide reasons and not merely renamed or reclassified, the employer must offer the injured worker a suitable vacant position.

(a) A suitable position is one which is substantially similar to the former position in compensation, duties, responsibilities, skills, location, duration and shift.

(b) The injured worker shall have the right to discuss and receive clarification in writing of the specific duties of the position with the employer prior to actually commencing work.

(c) At the time of the injured worker's demand for reinstatement, if the former job no longer exists and an alternative job is not available, the injured worker must follow the employer's non-discriminatory and written reporting policy which has been effectively made known to the employer's work force and is practiced by the employer, until the employer offers the injured worker the former job or a suitable alternative. If the employer has no such reporting policy, the injured worker must inform the employer of any change in address and telephone number within ten days of the change.

(3) The attending physician's approval for the injured worker's return to the former job is prima facie evidence of the injured worker's physical ability to perform the former job. The employer may require the worker to provide such approval in writing prior to reinstatement.

(a) Although the attending physician's approval is prima facie evidence, the employer may require, within a reasonable period of time and at the employer's expense, further evidence of the worker's physical ability to perform the job. The employer may also consult the worker's physician(s) regarding the worker's condition.

(b) The employer may not question the attending physician's certificate as a subterfuge to avoid its responsibilities under ORS 659.415.

(4) The injured worker will make demand for reinstatement according to the employer's written policy. If the employer has no such policy, the injured worker's demand:

(a) May be oral or written; and

(b) Must be made to a supervisor, personnel officer or someone in management; and

(c) May be made at any time after release by the attending physician, but no later than the seventh calendar day following the date the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment. For purposes of this section, notification shall be deemed to occur three days following the deposit of the certified mail with the United States Postal Service if such mail is sent to the last known address of the injured worker.

- (d) May be made by the injured worker, the injured worker's attorney or the Workers' Compensation carrier.
- (e) Extenuating circumstances may, in very rare instances, extend the requirement for timely demand.
- (f) When the employer has made it known to the worker prior to the injured worker's demand that reinstatement will not be considered, even if a suitable position is vacant, and that an actual demand would therefore be futile, the Division may consider the worker to have made timely demand for the purpose of these rules.
- (5) Reinstatement rights are subject to the provisions of a valid collective bargaining agreement.
- (6) The employer has no obligation to create a job for a returning injured worker and is under no obligation to continue a particular position if one has been created.
- (7) Except as provided in these rules, the injured worker has no greater right to a job or other employment benefit than if the worker had not been injured.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 695

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 3-1986, f. & ef. 4-7-86; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96; BL 10-1996, f. & cert. ef. 12-4-96

**839-006-0131**

**Loss of Reinstatement Rights Under ORS 659.415**

- (1) An injured worker loses the right to reinstatement when any of the following occurs:
  - (a) The injured worker is determined to be medically stationary and not physically able to return to the former position;
  - (b) The worker is eligible and participates in vocational assistance under ORS 656.340;
  - (c) The worker accepts suitable employment with another employer after becoming medically stationary;
  - (d) The worker refuses a bona fide offer from the employer of light duty or modified suitable employment prior to becoming medically stationary;
  - (e) Demand for reinstatement is not made by the worker within seven days from the date the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker to the former position;
  - (f) Three years have elapsed from the date of injury;
  - (g) The worker is discharged for reasons not connected with the injury and for which others are or would be discharged;
  - (h) The worker clearly abandons future employment with the employer.
- (2) The right to reinstatement does not apply to:
  - (a) A worker hired on a temporary basis as a replacement for an injured worker;
  - (b) A seasonal worker employed to work less than six months in a calendar year;
  - (c) A worker whose employment at the time of injury resulted from referral from a hiring hall to short term employment



operating pursuant to a collective bargaining agreement

Stat. Auth.: ORS 659.103

Stats. Implemented: Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0135**

**Injured Worker and Employer Responsibilities Under ORS 659.420**

- (1) An employer with 6 or more employees is required to re-employ an injured worker not physically able to perform the former job to the most suitable vacant position available if:
- (a) The injured worker is medically released to perform the duties of the vacant suitable position; and
  - (b) Timely demand is made as provided in OAR 839-06-135(4).
- (2) A suitable position is one which is as similar as practicable to the former position in compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent) and shift:
- (a) The injured worker shall have the right to discuss and receive clarification in writing of the specific duties of the position with the employer prior to actually commencing work;
  - (b) At the time of the injured worker's demand for reemployment, a suitable alternative may not be available. When this occurs, the injured worker must follow the employer's non-discriminatory and written reporting policy which has been effectively made known to the employer's work force and is practiced by the employer, until the employer offers the injured worker a suitable position. If the employer has no such reporting policy, the injured worker must inform the employer of any change in address and telephone number within ten days of the change.
- (3) The attending physician's approval for the injured worker's return to a suitable position is prima facie evidence of the injured worker's physical ability to perform the job. The employer may require the worker to provide such approval in writing prior to reemployment:
- (a) Although the attending physician's approval is prima facie evidence, the employer may require, within a reasonable period of time and at the employer's expense, further evidence of the worker's physical ability to perform the job. The employer may also consult the worker's physicians regarding the worker's condition;
  - (b) The employer may not question the attending physician's certificate as a subterfuge to avoid its responsibilities under ORS 659.420.
- (4) The injured worker will make demand for reemployment according to the employer's written policy. If the employer has no such policy, the injured worker's demand:
- (a) May be oral or written;
  - (b) Must be made to a supervisor, personnel officer or someone in management; and
  - (c) May be made at any time after release by the attending physician, but no later than the seventh calendar day following the date the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment. For purposes of this section, notification shall be deemed to occur three days following the deposit of the certified mail with the United States Postal Service if such mail is sent to the last known address of the injured worker;

- (d) May be made by the injured worker, the injured worker's attorney or the Workers' Compensation carrier;
  - (e) Extenuating circumstances may, in very rare instances, extend the requirement for timely demand;
  - (f) When the employer has made it known to the worker prior to the injured worker's demand that reemployment will not be considered even if a suitable position is vacant and that an actual demand would therefore be futile, the Division may consider the worker to have made timely demand for the purpose of these rules.
- (5) Reemployment rights are subject to the provisions of a valid collective bargaining agreement.
- (6) The employer has no obligation to create a job for a returning injured worker and is under no obligation to continue a particular position if one has been created.
- (7) Except as provided in these rules, the injured work has no greater right to a job or other employment benefit than if the worker had not been injured.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 3-1986, f. & ef. 4-7-86; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0136**

**Loss of Reemployment Rights Under ORS 659.420**

An injured worker loses the right to reemployment when any of the following occurs:

- (1) The worker's attending physician or a medical arbiter determines, after the worker is medically stationary, that the worker cannot return to reemployment at any position with the employer.
- (2) The worker is eligible and participates in vocational assistance under ORS 656.340.
- (3) The worker accepts suitable employment with another employer after becoming medically stationary.
- (4) The worker, prior to becoming medically stationary, refuses the employer's bona fide offer of suitable light duty or modified employment.
- (5) Demand for employment is not made by the employee within seven days of the date that the worker is notified by the insurer or self-insured employer by certified mail, that the worker's attending physician has released the worker for reemployment.
- (6) Three years have elapsed from the date of injury.
- (7) The worker is discharged for reasons not connected with the injury and for which others are or would be discharged.
- (8) The worker clearly abandons future employment with the employer.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0140****Available/Vacant**

If an employer is required to return an injured worker to an available/vacant position, the employer must consider positions in all its facilities within reasonable commuting distance, not just the facility at which the injured worker was previously employed. For the purposes of ORS 659.415, an injured worker's former position is available regardless of the hiring or assignment of a replacement worker.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0145****Suitable**

(1) If an employer is required to return an injured worker to suitable employment pursuant to ORS 659.415 or 659.420, the employer does not have to offer the injured worker a selection of suitable jobs. If the employer has several available jobs that would be suitable, the employer may, but is not required to, offer the injured worker a choice of jobs. In determining whether a particular job offer is suitable the Division will consider the employer's size, diversity, nature, and pattern of job openings and whether the injured worker is qualified to perform the job. Qualified means:

- (a) The injured worker meets minimum standards used by the employer to fill the job;
- (b) The injured worker has previously done the job in an acceptable manner; or
- (c) The injured worker would be qualified for the job with the same training given anyone newly assuming the position.

(2) An employer is neither required to offer nor prohibited from offering an alternative position which would promote the returning injured worker.

(3) A suitable job is one that is most similar to the former job in compensation, duties, responsibilities, skills, location, duration (full or part-time, temporary or permanent), and shift:

(a) Similar location means that the job is in Oregon and within reasonable commuting distance, except where the former job site is no longer in operation or the nature of the employer's business routinely involves the transfer of employees. A job outside of Oregon is suitable if the worker and employer mutually agree on it;

(b) Substantially similar compensation is the normal compensation the employer pays to others of the same education, skill, and seniority who are employed to do that job. This compensation may be greater than, the same as, or less than the rate the injured worker was earning at the time of injury, provided that it is not a subterfuge to avoid the employer's responsibilities.

(4) The employer may assign the injured worker to different duties at the worker's former compensation provided that:

- (a) The assignment is temporary and is part of a return-to-work program; and
- (b) The worker is returned to available and suitable work when the worker is physically capable; and

(c) The assignment is not a subterfuge to avoid the employer's responsibilities.

(5) If an employer offers a position which the injured worker believes the injured worker is physically unable to perform, the worker is not required to accept the position but must provide medical evidence of inability to perform the job to the employer within ten calendar days of the offer. Unless the worker is able to provide such medical evidence the job will be considered suitable.

(6) If an employer offers an injured worker a job which the worker considers unsuitable for reasons other than physical ability, the worker must accept the job and notify the employer within ten calendar days of the receipt of the offer that the worker considers the job unsuitable and the reasons why.

(7) If the employer and the injured worker disagree about the suitability of a job, and the worker files a complaint as provided by statute and these rules the Division will determine its suitability.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96

## **839-006-0146**

### **Injured Temporary Workers and Employer Responsibilities Under ORS 659.415 and 659.420**

Subject to these rules regarding availability and suitability, and except as otherwise provided in a valid collective bargaining agreement:

(1) A worker serving on probationary or trial service status, whether due to initial hire, promotion or disciplinary measures, when a compensable injury occurs, has the same rights under ORS 659.415 and 659.420 as other injured workers, except that upon return to work after timely demand, the injured worker resumes the worker's former status unless waived by the employer.

(2) A seasonal worker must have been employed six months or more in a calendar year to have the same rights as other injured workers under ORS 659.415. A seasonal employee need not have been employed six months to have the same rights, except as affected by the seasonal nature of the employment, as other injured workers under 659.420. Example: If the worker makes timely demand under these rules prior to the end of the season, the worker must be reinstated/reemployed. If the season ends prior to the worker's timely demand, and the worker's employment thus would have ended, the reinstatement/reemployment is deferred until the next seasonal period of employment following the timely demand.

(3) A worker hired as a replacement for an injured worker does not have any rights under ORS 659.415. A worker employed in a limited duration or temporary position has the same rights under ORS 659.415 and 659.420 as other injured workers except as affected by the nature of the original employment:

(a) A worker employed for a limited period of time must be reinstated/reemployed to the next available and suitable position from the date of timely demand until the original time the employment expires;

(b) A worker employed for a temporary position, that ends upon the accomplishment of a defined task, must be reinstated/reemployed to the next available and suitable position from the date of timely demand until the task is accomplished.

(4) Nothing in this rule shall prevent an employer from extending the original period of employment in the worker's favor.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0150**

**Loss of Reinstatement/Reemployment Rights**

- (1) Every injured worker has the right to reinstatement/reemployment under ORS 659.415 and 659.420.
- (2) An injured worker loses the right to reinstatement to his/her former job under ORS 659.415 if:
  - (a) A medical determination has been made by the attending physician that the worker is permanently disabled from returning to the former position of employment, or following appeal of such determination, such determination is confirmed by a medical arbiter or panel of medical arbiters pursuant to ORS chapter 656.340;
  - (b) The worker is eligible for and participates in vocational assistance under ORS 656.340;
  - (c) The worker accepts suitable employment with another employer after becoming medically stationary;
  - (d) The worker refuses a bona fide offer from the employer of light duty or modified employment which is suitable prior to becoming medically stationary;
  - (e) The worker fails to request reinstatement within seven calendar days from the date that the worker is notified by the insurer or self-insured employer by certified mail that the worker's attending physician has released the worker for employment; or
  - (f) Three years have elapsed since the date of the worker's original injury.
- (3) An injured worker loses all rights to reinstatement/reemployment under ORS 659.415 and 659.420 if:
  - (a) The employer discharges the worker for reasons not connected with the injury and for which others are or would be discharged, except as provided in subsections (4)(a) and (b) of this rule;
  - (b) The worker refuses an available and suitable job offer under either ORS 659.415 or 659.420;
  - (c) The worker clearly abandons future employment with the employer; or
  - (d) The worker fails:
    - (A) To make timely demand;
    - (B) To follow the employer's written reporting policy or, in the absence of such policy, these rules' reporting policy; or
    - (C) To report to work as specified in the employer's suitable job offer.
- (4) Subject to sections (1) through (3) of this rule, an injured worker does not lose his/her right to reinstatement/reemployment under ORS 659.415 and 659.420 if:
  - (a) The employer discharges all employees who are off the job for a certain amount of time. The employer may discharge the injured worker under this policy. The injured worker does not lose his/her reinstatement/reemployment

rights;

(b) The employer discharges the injured worker other than for cause or the injured worker quits or resigns involuntarily or under mistake of fact;

(c) After making timely demand for reinstatement/ reemployment, the injured worker takes a job which is not suitable with another employer while waiting for a suitable job to become available.

(5) An injured worker who accepts the employer's suitable job offer under ORS 659.415 has no further rights under this statute based on the compensable injury involved.

(6)(a) An injured worker who is physically unable to perform the duties of his/her former job and who accepts a suitable job with the same employer under ORS 659.420 and these rules, retains reinstatement/reemployment rights under ORS 659.415. If the injured worker recovers to the point that he/she can perform the duties of the former job, the injured worker may make timely demand for the former job, subject to the requirements of OAR 839-006-0130. The employer is then also subject to that section of these rules;

(b) An injured worker who is unable to perform the duties of his/her former job and who refuses a suitable job with the same employer loses the right to reinstatement to the worker's former position.

(7) Notwithstanding OAR 839-006-0130(6) and OAR 839-006-0135(5), compliance with the duty to mitigate damages by seeking employment with another employer shall not extinguish reinstatement rights, except when the injured worker acquires and commences suitable employment with another employer after becoming medically stationary.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS 659.410

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91

**839-006-0155**

**Discipline and Termination**

(1) Employers who discipline workers for excessive absenteeism cannot count the time an injured worker is off the job because of a compensable injury when calculating the injured worker's absenteeism rate, so long as the time off the job is covered by time loss compensation or other absence medically certified by the treating physician in connection with the compensable injury.

(2) An employer who terminates all employees who are off the job for a certain amount of time may terminate injured workers under the same conditions. An employee so terminated does not lose reinstatement rights under ORS 659.415 and 659.420 unless the employee would have been terminated for reasons unrelated to the injury.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1983, f. & ef. 1-26-83; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0165**

**Effect of a Bargaining Agreement**

The reinstatement/reemployment rights under ORS 659.415 and 659.420 are subject to seniority and other employment restriction provisions of a valid collective bargaining agreement.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS 659.415 & 659.420

Hist.: BL 1-1983, f. & ef. 1-26-83

**839-006-0170**

**Effective Date**

The provisions of Section 45, Chapter 2, Oregon Laws 1990 (Special Session of May 7, 1990), and these rules, are effective July 1, 1990. They shall apply to cases in which demand for reinstatement occurred on or subsequent to that date. For the purpose of this rule, demand will be deemed to have occurred when the employer is first informed that the injured worker seeks reinstatement/reemployment whether by actual notice or three days following the worker's deposit of the certified mail with the United States Postal Service.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS 659.415 & 659.420

Hist.: BL 13-1990(Temp), f. & cert. ef. 9-4-90; BL 3-1991, f. 2-12-91, cert. ef. 2-15-91

**Persons With Disabilities (ORS 659.425)**

**839-006-0200**

**Policy**

It is the public policy of the State of Oregon to guarantee persons with disabilities the fullest possible participation in the social and economic life of the state, including engaging in employment. The people of the state have a right to lawful employment without discrimination due to disability. The Civil Rights Division of the Bureau of Labor and Industries has the responsibility to protect this right through enforcement of ORS 659.400 to 659.435.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84 ; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0201**

**Purpose and Scope**

These rules contain the interpretation of ORS 659.400, 659.405, 659.425 and 659.435, which the Civil Rights Division uses to enforce these sections. These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0205**

**Definitions**

As used in these rules:

- (1) "Accommodation" means a modification by the employer of the work site, job duties, or other requirements of a position for the purpose of enabling a person with a disability to perform the work involved. See OAR 839-006-0240.
- (2) "Disability" means a physical or mental (including emotional or psychological) impairment which substantially limits one or more major life activities. Disability does not include the current use of illegal drugs.
- (3) "Duly licensed health professional", in addition to physicians and osteopathic physicians, includes psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, naturopaths, physiotherapists, and radiologic technicians insofar as any opinion or evaluation within the scope of the relevant license applies or refers to the individual's physical or mental impairment.
- (4) "Major life activity" includes but is not limited to: walking, speaking, breathing, performing manual tasks, hearing, learning, caring for oneself and working in general, considering the person's experience and education, as opposed to performing a particular job.
- (5) "Medical" means authored by or originating with a medical or osteopathic physician or duly licensed health professional.
- (6) "Misclassified", as used in ORS 659.400 (2)(b), means an erroneous or unsupported medical diagnosis, report, certificate, or evaluation, including an erroneous or unsupported evaluation by a duly licensed health professional.
- (7) "Perceived disability" is:
  - (a) A physical or mental condition which does not limit a major life activity but which is thought to be disabling (example: flu thought to be AIDS); or
  - (b) The perception of a disability where no condition exists (example: a person who speaks slowly is thought to be mentally impaired); or
  - (c) A condition disabling only because of the attitude of others (example: disfigurement because of burns).
- (8) "Physical or mental impairment" means an apparent or medically detectable condition which weakens, diminishes, restricts or otherwise damages a person's health or physical or mental activity.
- (9) "Reasonable accommodation" means a modification as defined in section (1) of this rule, which can be made without undue hardship to the employer. See OAR 839-006-0245.
- (10) "Treatment" includes not only examination, evaluation, diagnosis, and therapy by a physician, but also such services when performed by a duly licensed health professional within the scope of the applicable license.

Stat. Auth.: ORS Ch. 651 & 659

Stats. Implemented: ORS Ch. 659



Hist.: BL 2-1984, f. & ef. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0210**

**Employers, Employment Agencies and Labor Organizations Prohibited from Discrimination Based on Disability**

- (1) ORS 659.400(3) limits the employer subject to ORS 659.400 to 659.435 to those "who employ six or more persons". "Employ six or more persons" means that an employer employs at least six employees in Oregon on a full-time, part-time, or seasonal basis at the time of the discriminatory act alleged under ORS 659.425.
- (2) "Employment agency" has the same meaning as in ORS 659.010(7).
- (3) "Labor organization" has the same meaning as in ORS 659.010(10).

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0215**

**Persons Protected from Employment Discrimination Based on Disability**

- (1) ORS 659.425 protects a person with a disability from discrimination by an employer or prospective employer because of a perceived or actual physical or mental impairment which, with reasonable accommodation, does not prevent the performance of the work involved.
- (2) ORS 659.425 protects a person with a disability from discrimination because of disability by an employment agency in referral or classification for employment.
- (3) ORS 659.425 prohibits labor organizations from discriminating in union membership because of disability.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0220**

**Procedures Regarding Violation of ORS 659.425**

A person who claims a violation of ORS 659.425 may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS Ch. 659

Stats. Implemented ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84 ; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0225**

**Ability to Perform; Employee Duties**

(1) To come within the protection of ORS 659.425, a person with a disability must be able to perform the essential functions of the position occupied or sought.

(a) "Able to Perform" means:

(A) Possessing the training, experience, education, and skill necessary to perform the duties of the position and normally required by the employer of other candidates for the position; and

(B) Possessing the ability to perform the essential functions of the job safely and efficiently, with reasonable accommodation and without present risk of probable incapacitation. A person occupying a particular position may at any time be evaluated to determine if there is a present risk of probable incapacitation.

(b) "Essential functions" means:

(A) The function or functions for which the position exists; or

(B) A function or functions which only a few people are routinely available to perform; or

(C) A highly specialized function for which the employee has specialized knowledge.

(2) An employer may not use the provisions of this section as a subterfuge to avoid the employer's duty under ORS 659.425.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0230**

**Exception: Enhanced Risk to Others**

Notwithstanding other provisions of these rules, a position which by its very nature includes an inherent risk of injury or incapacitation to co-workers or the general public need not be filled by a person with a disability if, even with reasonable accommodation, the inherent risk is materially enhanced because of the person's impairment.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0235**

**Inquiries Regarding Ability to Perform; Medical Evaluation**

- (1) An employer may inquire whether an individual has the ability to perform the duties of the position sought or occupied.
- (2) An employer may require a post offer medical evaluation of a person's physical or mental ability to perform the work involved in a position:
  - (a) The person seeking or occupying a position must cooperate in any medical inquiry or evaluation, including production of medical records and history relating to the person's ability to perform the work involved; and
  - (b) If the employer requires a medical evaluation as a condition of hire or job placement and the evaluation verifies a physical or mental impairment affecting the ability to perform the work involved, or verifies a present risk of probable incapacitation, the employer may not refuse to hire or place a person based on the person's impairment unless no reasonable accommodation is possible.
  - (c) The employer shall pay the cost of a medical evaluation or the production of medical records it has requested as provided in ORS 659.330.
- (3) When an employer relies on medical evidence to determine whether a person is able to perform the work involved, the Division will consider only medical evidence available to the employer at the time the employment decision was made, including:
  - (a) Medical evidence known to the employer; and
  - (b) Medical evidence which should have been known to the employer through reasonable diligence.
- (4) An employer may not use the provisions of this section as a subterfuge to avoid the employer's duties under ORS 659.425.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0240**

**Temporary, Progressive, Mutable Impairments, Particular Conditions**

- (1) Some impairments may be temporary in nature. Short-term physical or mental impairments leaving no residual disability or impairment are not disabilities within the meaning of the statute and these rules, except where they are erroneously perceived by the employer as disabling or impairing. Examples: a broken leg, an appendectomy or pneumonia.
- (2) Conditions which are progressive disabilities such as cancer or Hodgkin's disease and which either do not impair the person's ability to perform the work involved or with reasonable accommodation would not impair the person's ability to perform the work involved may not form the basis for rejection of the individual for a position.
- (3) Mutable conditions which are controllable by diet, drug therapy, psychotherapy, or other medical means are disabilities and may not form a basis for rejection of the person for a position as long as the person is able to perform the work involved in the position occupied or sought. A person with a controlled condition who abandons or ignores the controlling therapy loses the protection of ORS 659.425 if the absence of the control removes the ability to perform, as defined. Examples of mutable conditions include: alcoholism, diabetes mellitus or epilepsy.

Stat. Auth.: ORS Ch. 651 & 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 15-1990, f. 10-29-90, cert. ef. 11-1-90; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0245**

**Reasonable Accommodation/Undue Hardship**

ORS 659.425 requires an employer, upon request by an employee with a disability to provide reasonable accommodation for that person's physical or mental impairment when the accommodation will enable that person to perform the work involved in the position occupied or sought.

(1) Accommodation is a modification or change in one or more of the aspects or characteristics of a position including but not limited to:

- (a) Location and physical surroundings;
- (b) Job duties;
- (c) Equipment used;
- (d) Hours, including but not limited to:
  - (A) Continuity (extended breaks, split shifts, medically essential rest periods, treatment periods, etc.); and
  - (B) Total time required (part-time, job-sharing).
- (e) Method or procedure by which the work is performed.

(2) Accommodation is required where it does not impose an undue hardship on the employer. Whether an accommodation is reasonable will be determined by one or more of the following factors:

- (a) The nature of the employer, including the total number in and the composition of the work force, the type of business or enterprise and the number and type of facilities;
- (b) The cost to the employer of potential accommodation and whether there is a resource available to the employer which would limit or reduce the cost. Example: funding through a public or private agency assisting persons with disabilities;
- (c) The effect or impact of the potential accommodation on production, the duties and/or responsibilities of other employees and the safety of the employee, coworkers and the general public. See OAR 839-006-0230;
- (d) Medical approval of the accommodation; and
- (e) Requirements of a valid collective bargaining agreement.

(3) A person with a disability who is an employee or candidate for employment must cooperate with an employer in the employer's efforts to reasonably accommodate the person's impairment. An employee with a disability may propose specific accommodations to the employer. The accommodation selected by the employer need not be one of the employee's suggestions, nor is the employer required to offer the accommodation most desirable to the employee.

(4) An employer is not required to provide reasonable accommodation to an employee with HIV unless and until the employee provides the employer with a copy of the test result confirming the diagnosis. See ORS 433.045(3).

(5) An employer may not use the provisions of this section as a subterfuge to avoid the employer's duty under ORS 659.425.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0250**

**Customer Preference; Co-Worker Preference**

The attitude or preference of employers, managers, supervisors, co-workers, customers, clients, or the general public toward the person's perceived or actual impairment may not be considered by the employer in evaluating the person's ability to perform the work involved.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**839-006-0255**

**Effect of Law**

Where a law or regulation of this state or of the United States prevents the employment in a particular position of an person with a specified impairment or specified severity of impairment an employer is not required to employ the individual in that position if the individual has the described, medically verified impairment. Nothing in this rule shall be construed to permit denial of employment to such person in positions which are not subject to the law or regulations.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 2-1984, f. & ef. 1-31-84; BL 4-1996, f. & cert. ef. 3-12-96

**Protection from Discrimination in Public Accommodation**

**839-006-0300**

**Discrimination Based on Disability**

No public accommodation shall discriminate against an individual by any distinction or restriction because that individual is a disabled person.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 10-1996, f. & cert. ef. 12-4-96

**839-006-0310**

**Removal of Physical Barriers**

- (1) A public accommodation must remove physical barriers to entering and using existing facilities when such removal is readily achievable.
- (2) Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include:
- (a) The nature and cost of the action needed;
  - (b) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
  - (c) The administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
  - (d) The overall financial resources of any parent corporation or entity.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 10-1996, f. & cert. ef. 12-4-96

**839-006-0320**

**Provision of Auxiliary Aids/Significant Difficulty**

A public accommodation must provide auxiliary aids and services when they are necessary to ensure access to goods, services or facilities offered by a public accommodation. Provision of auxiliary aids that would result in significant difficulty or expense or in a fundamental alteration in the nature of the goods or services is not required and is to be determined on a case by case basis.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 10-1996, f. & cert. ef. 12-4-96

**839-006-0330**

**Readily Achievable/Significant Difficulty**

- (1) A public accommodation must remove physical and administrative barriers, if readily achievable, (as defined in OAR 839-006-0305) in order to make goods and services accessible.
- (2) If barrier removal is not readily achievable, alternative steps must be taken to make goods and services accessible,

- such as providing goods and services at the door, sidewalk, or curb; providing home delivery; retrieving merchandise from inaccessible shelves or racks; relocating activities to accessible locations; relaxing of administrative policies.
- (3) Extra charges shall not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal.
- (4) Removal of physical or administrative barriers that would result in significant difficulty or expense or in a fundamental alteration in the nature of the goods or services is not required and is to be determined on a case by case basis.

Stat. Auth.: ORS Ch. 659

Stats. Implemented: ORS Ch. 659

Hist.: BL 10-1996, f. & cert. ef. 12-4-96

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 7**

**SUBSTANTIVE RULES SEX: PROHIBITED DISCRIMINATION (ORS 659.029 and 659.030)**

**839-007-0500**

**Purpose and Scope, Sex Discrimination**

- (1) The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 659.029 and 659.030 which prohibit discrimination because of gender.
- (2) OAR 839-007-0500 to 839-007-0565 apply to all complaints and inquiries under ORS 659.029 and 659.030 received on or after the effective date of these rules.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1986, f. & ef. 3-19-86; BL 4-1996, f. & cert. ef. 3-12-96

**839-007-0505**

**Definitions**

- As used in these rules:
- (1) "Because of sex" means because of gender and includes sexual harassment, pregnancy, childbirth and medical conditions and occurrences related to pregnancy and childbirth.
- (2) "Employer", "employee", "labor organization", and "employment agency" have the same meaning as in ORS 659.010.
- (3) "Sexual harassment" is unwelcome conduct of a sexual nature. See OAR 839-007-0550.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659



Hist.: BL 1-1986, f. & ef. 3-19-86; BL 4-1996, f. & cert. ef. 3-12-96

**839-007-0506**

**Different Treatment Because of Gender**

Employers are prohibited from discriminating because of gender in hiring, promotion and discharge, in terms, conditions or privileges of employment, and in benefits and compensation.

- (1) This section shall not be construed to require employers to treat all employees exactly the same, but rather to prohibit employers from using gender as the basis for making employment decisions.
- (2) In very rare instances, gender may be a bona fide occupational qualification (BFOQ). See OAR 839-005-0025.
- (3) Anyone claiming a violation of ORS 659.029 or 659.030 may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-007-0510**

**Protections and Rights Under ORS 659.029/659.030 Relating to Pregnancy**

- (1) The statutes protect pregnant women from sex discrimination in employment.
- (2) Regarding the ability or inability to work by reason of physical condition, pregnant women must be treated the same as males, non-pregnant females and other employees with off the job illness or injuries.
- (3) The statutes prohibit discrimination regarding employee and dependent spouse benefits for pregnancy where employee and dependent spouse benefits exist for other medical conditions.
- (4) Women needing to be absent from work because of pregnancy or childbirth may be protected by the Oregon Family Leave Act. See OAR 839-009-0200 et seq.
- (5) An employer may request medical verification of a pregnant woman's ability to perform her job.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1986, f. & ef. 3-19-86; BL 4-1996, f. & cert. ef. 3-12-96

**839-007-0515**

**Procedure Regarding Violation of ORS 659.029/659.030**

Anyone claiming a violation of ORS 659.029 or 659.030 may file a complaint with the Division as provided in OAR

839-003-0025.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1986, f. & ef. 3-19-86; BL 4-1996, f. & cert. ef. 3-12-96

## 839-007-0550

### **Definition: Sexual Harassment**

Sexual harassment is unlawful discrimination on the basis of gender. Unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature constitute sexual harassment when such conduct is directed toward a person because of that person's gender, and:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment (referred to as quid pro quo harassment); or
- (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (referred to as quid pro quo harassment); or
- (3) Such conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment (referred to as hostile environment harassment).
- (4) Whether particular conduct directed towards a person constitutes sexual harassment will be determined by the Civil Rights Division. The standard will be viewed from the perspective of the reasonable person in the circumstances of the person alleging harassment.
- (5). In quid pro quo harassment cases, an employer is liable for acts of sexual harassment by its agents or supervisory employees against an employee. In hostile environment harassment cases, an employer is liable for acts of sexual harassment by its agents or employees against another employee where the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.
- (6) An employer is liable for the sexual harassment by its agents, employees and non-employees even if the acts complained of were of the kind previously consented to by that employee, if the employer knew or should have known that the offended employee had withdrawn consent to the otherwise offensive conduct.
- (7) An employer may be liable for the sexual harassment of employees by non-employees in the workplace, where the employer or its agents knew or should have known of the conduct and failed to take immediate and appropriate corrective action. In reviewing these cases the Civil Rights Division will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.
- (8) Anyone claiming a violation of this section may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 1-1986, f. & ef. 3-19-86 ; BL 4-1996, f. & cert. ef. 3-12-96

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 8**

**DISABLED PERSONS**

**Real Property Transactions  
(ORS 659.430)**

**839-008-0200**

**Policy**

The public policy of the State of Oregon is to guarantee disabled persons the fullest possible participation in the social and economic life of the state, including the right to purchase, lease or rent property without discrimination on the basis of disability. The Bureau of Labor and Industries has the responsibility of protecting this right through enforcement of ORS 659.400 to 659.435. The Bureau does this through its Civil Rights Division.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0201**

**Purpose and Scope**

These rules interpret ORS 659.400, 659.405, 659.425, 659.430 and 659.435. These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

## 839-008-0205

### Definitions

As used in ORS 659.400 to 659.435 and these rules, unless the context requires otherwise:

- (1) "Purchaser" means an occupant, prospective occupant, lessee, prospective lessee, renter, prospective renter, buyer or prospective buyer.
- (2) "Property" and "Real Property", as used in ORS 659.425 and 659.430, have the same meaning, and include, but are not limited to, real property used or intended for commercial, business or residential purposes.
- (3)(a) "Disabled Person" has the same meaning as in ORS 659.400(1) and (2);
- (b) "Disabled Person", as used in these rules, also includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees in bankruptcy or receivers whose primary purpose is to serve, represent or otherwise benefit the protected class.
- (4) "Physical and Mental Impairment", as used in these rules, means an apparent or medically detectable physical or mental condition which substantially limits, or is capable of substantially limiting, a major life activity as defined in ORS 659.400(2)(a).
- (5) "Is Regarded as Having an Impairment", as used in ORS 659.400(2)(c), means:
  - (a) Has a physical or mental impairment which does not substantially limit a major life activity but is treated by a landlord, realtor, seller, or agent thereof as having such a limitation;
  - (b) Has a physical or mental impairment which substantially limits a major life activity only as a result of the attitude of others toward such impairment; or
  - (c) Has no physical or mental impairment but is treated by a landlord, realtor, seller, or agent thereof as having an impairment.
- (6) "The Attitude of Others Toward Such Impairment" means an opinion, evaluation, or belief held by another person or persons toward an individual's perceived or actual physical or mental impairment.
- (7) "Duly Licensed Health Professional", in addition to physicians and osteopathic physicians, includes audiologists, chiropractors, clinical social workers, dentists, naturopaths, occupational therapists, optometrists, physiotherapists, podiatrists, psychologists, radiologic technicians, and speech pathologists, insofar as any opinion or evaluation within the scope of the relevant license applies or refers to the individual's physical or mental impairment.
- (8) "Medical" means authored by or originating with a medical or osteopathic physician or duly licensed health professional.
- (9) "Mis-classified", as in ORS 659.400(2)(b), means an erroneous or inadequately supported medical diagnosis, report, certificate or evaluation, including an erroneous or inadequately supported evaluation by a duly licensed health professional.
- (10) "Receipt or Alleged Receipt of Treatment for a Mental Disorder" means actual treatment of an individual for a mental condition, or an assertion that the individual received such treatment.
- (11) "Treatment" includes not only examination, evaluation, diagnosis and therapy by a physician, but also such services when performed by a duly licensed health professional within the scope of the applicable license.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0210**

**Persons Prohibited from Discriminating on the Basis of Disability in Real Property Transactions**

ORS 659.400 to 659.435, as they relate to real property transactions, prohibit handicap discrimination by:

- (1) Sellers, lessors, advertisers, real estate brokers and salespersons, or the agents of any of them;
- (2) Any person assisting, coercing, inducing or inciting another to permit or engage in an act or practice violating ORS 659.430.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0215**

**Persons Protected from Disability Discrimination in Real Property Transaction**

As they pertain to real property transactions, ORS 659.425 and 659.430 protect a disabled person, as defined in OAR 839-008-0205(1)(a), from discrimination by any of the persons listed in OAR 839-008-0210 on the basis of a perceived or actual physical or mental impairment, or, for the purposes of OAR 839-008-0205(2)(b), on the basis of a perceived or actual physical or mental impairment of those served, represented or benefited by the disabled person. Discrimination in real property transactions prohibited by ORS 659.425 and 659.430 includes a failure to make reasonable accommodation to the perceived or actual physical or mental impairment of a disabled person or, for the purposes of OAR 839-008-0205(2)(b), of those served, represented or otherwise benefited by the disabled person.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0220**

**Ability to Purchase or Rent Real Property**

The protections of these rules and ORS 659.430 extend only to those disabled persons who have the legal capacity to contract for the purchase, rental or leasing of real property.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0225**

**Discrimination Based on "Just Cause"**

Those persons listed in OAR 839-008-0210 may engage in conduct otherwise prohibited by ORS 659.430(1) where such conduct is based on just cause. "Just cause" as used in these rules means reasonable grounds to believe that the sale, lease or rental of real property to a disabled person poses a significant risk to the health or safety of the disabled person, those served, represented or otherwise benefited by the disabled person, co-tenants or the public at large; provided, however, that just cause does not excuse such discrimination where reasonable accommodation to the physical or mental impairment of the disabled person, or of those served, represented or otherwise benefited by the disabled person, would render insignificant the health and safety risk posed by the impairment, and provided further that just cause shall not excuse in any circumstances discrimination on the basis of a perceived disability.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0230**

**Reasonable Accommodation to Physical or Mental Impairments**

"Reasonable accommodation" as used in these rules means a modification in the terms and conditions of real property transactions; alteration of the real property itself is not required. Accommodation is required where it does not impose an undue hardship on the persons listed in OAR 839-008-0210.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

**839-008-0235**

**Procedures Regarding Violation of ORS 659.430**

A disabled person claiming a violation of ORS 659.430 may file a complaint with the Civil Rights Division. See OAR 839-003-0000 et seq. for complaint procedures.

Stat. Auth.: ORS Ch. 183 & 659

Stats. Implemented: ORS 659.430

Hist.: BL 9-1988, f. & cert. ef. 6-16-88

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 9**

**FAMILY MEDICAL LEAVE: RIGHT TO LEAVE OF  
ABSENCE AND REINSTATEMENT**

**Oregon Family Leave Act**

**839-009-0200**

**Purpose and Scope**

The 1995 Oregon Family Leave Act, hereinafter referred to as OFLA, provides leave:

- (1) To care for an employee's newborn, newly adopted or newly placed foster child. These rules refer to this type of leave as parental leave.
- (2) For an employee's own serious health condition or to care for a family member with a serious health condition, including pregnancy related conditions. These rules refer to this type of leave as serious health condition leave.
- (3) To care for an employee's child who is suffering from an illness or injury that is not a serious health condition but requires home care. These rules refer to this type of leave as sick child leave.
- (4) Nothing in these rules shall prevent an employer from providing leave or benefits in addition to those required by OFLA and these rules.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 4, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0210**

**Definitions**

(1) "Covered employer" means any employer who employs 25 or more persons in the State of Oregon for each working day during each of 20 or more calendar work weeks in the calendar year in which the leave is to be taken or in the calendar year immediately preceding the year in which the leave is to be taken.

(2) "Eligible employee" means:

(a) For the purpose of parental leave, an employee who has worked for a covered employer for at least 180 calendar days immediately preceding the date on which family leave begins;

(b) For all other leave purposes, an employee who has worked for a covered employer for an average of at least 25 hours per week for the 180 calendar days immediately preceding the date on which family leave begins.

(3) "Family Leave" means a leave of absence for purposes described in OAR 839-009-0220.

(4) "Family member" means the spouse, parent, parent-in-law or biological, adopted or foster child of an employee or a person with whom the employee is or was in a relationship of "in loco parentis". A child is the employee's family member whether or not the employee is the custodial parent.

(5) "In loco parentis" means in the place of a parent, financially supporting and having day to day responsibility for the care of a child.

(6) "Child" for the purposes of parental and sick child leave, means a biological, adopted, foster or stepchild of the employee, including a child under the age of 18 or an adult dependent child who is substantially limited by a physical or mental impairment as defined by OAR 839-006-0205(7), for whom the employee has parental rights and duties, as defined by law, and is responsible to provide care and nurturance.

(7) "Foster child" means a child being reared, as a result of legal process, by a person other than the child's natural parent.

(8) "Health care provider" means the person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, and who is a physician licensed to practice medicine and surgery, including a doctor of osteopathy; or a podiatrist, a dentist, a clinical psychologist, an optometrist, a naturopath, a nurse practitioner, a direct entry midwife, a nurse-midwife or a clinical social worker authorized

to practice and performing within the scope of their professional license as provided by law. Health care provider includes a Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts, who is primarily responsible for the treatment of the eligible employee or a family member of the eligible employee. Health care provider includes a chiropractor, but only to the extent that a chiropractor provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(9) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition which requires inpatient care in a hospital, hospice or residential medical care facility; or

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy or child birth or period of absence for prenatal care.

(10) "Constant care" means care wherever performed, whether at home or any nursing home, institution, hospice, or health care facility. Where, however, the family member is receiving long-term physical care at a nursing home, institution, hospice or other health care facility, leave shall apply only to those periods of transition from one home or facility to another, including time to make arrangements for such transitions, or when the family member requires

transportation or other assistance in obtaining care from a physician.

(11) "Intermittent leave" means leave taken for a single serious health condition in multiple blocks of time that requires an altered or reduced work schedule.

(12) "One-year period" for calculating family leave entitlement means a calendar year, a fixed twelve month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first family leave or a 12-month period measured backward from the date the employee uses any family leave. The option selected shall be applied to all employees. In the absence of an employer policy defining how a one-year period will be measured, a calendar year will be used.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 1, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0220**

**Relationship of OFLA to Federal Family and Medical Leave Act (FMLA)**

Leave taken under Federal FMLA will count as OFLA leave entitlement.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 4, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0230**

**Purposes For Taking Family Leave**

Purposes for which Family Leave may be taken:

- (1) To care for the employee's newborn, newly adopted or newly placed foster child under 18 years of age or a newly adopted or newly placed foster child 18 years of age or older who is incapable of self care because of a physical or mental impairment ("parental leave").
- (2) To care for a family member with a serious health condition ("serious health condition leave").
- (3) To recover from or seek treatment for a serious health condition which renders an employee unable to perform at least one essential function of the employee's regular position. This includes a pregnancy-related disability or a period of absence for prenatal care ("serious health condition leave").
- (4) To care for an employee's child who is suffering from an illness or injury which requires home care but is not a serious health condition. An employer is not required to grant leave for routine medical or dental appointments for conditions not requiring home care ("sick child leave").

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 4, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0240**

**Length of Leave and Other Conditions**

- (1) An eligible employee is entitled up to 12 weeks of family leave in any one-year period except that:
- (a) A woman who takes leave because of a pregnancy related disability may take up to an additional 12 weeks for any other purpose enumerated in OAR 839-009-0230; and
  - (b) An employee who takes 12 weeks of parental leave may also take up to an additional 12 weeks of sick child leave.
  - (c) If the employee takes less than 12 weeks of parental leave, the employee is entitled to the balance of the 12 weeks for any other family leave purpose, except that the leave taken for parental leave shall not reduce the leave available for sick child leave.
- (2) When two family members work for the same covered employer, both employees may not take family leave at the same time unless:
- (a) One employee needs to care for the other employee who is suffering from a serious health condition; or
  - (b) One employee needs to care for a child who has a serious health condition while the other employee is also suffering from a serious health condition; or
  - (c) The employer allows concurrent leave.
- (3) Parental leave must be taken in one uninterrupted period except with the approval of the employer and must be completed within 12 months of the birth, adoption or placement of the child. The birth, adoption or foster placement of multiple children at one time entitles the employee to take only one 12 week period of family leave.
- (4) Sick child leave need not be provided to an eligible employee by a covered employer if another family member is available to care for the child. Available to provide care means being physically present and able to provide care.
- (5) If an employer has 25 to 49 employees, or the leave taken is not covered by the Federal Family and Medical Leave Act (sick child leave or serious health condition of a parent-in-law) and the employee is an exempt employee under the Federal Fair Labor Standards Act or the state Minimum Wage Law, then to maintain the exempt status, the employer may require the employee to take intermittent leave in blocks of at least one day.
- (6) The requirements of the Oregon Family Leave Act do not apply to any employer who offers to an eligible employee a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, that provides as one of its options employee leave at least as generous as the leave required by OFLA.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 5, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0250**

**Notice**

- (1) Except in situations described in sections 2 and 3 of this rule, a covered employer may require an eligible employee

to give up to 30 days written notice, including an explanation of the need for leave, before starting family leave. When an employee is able to give advance notice of the need to take family leave, the employee must follow the employer's usual and customary reporting procedure for requesting leave.

(2) When the qualifying reason precludes the employee giving the employer 30 days notice, the employee is encouraged to give the employer as much advance notice as is practicable.

(3) To take family leave in an unanticipated or emergency situation, an employee must give verbal or written notice within 24 hours of commencement of the leave and the employer may require written notice within three days of returning to work. Notice may be given by any other person on behalf of the employee taking family leave.

(4) If an employee fails to give notice as required by the employer's policies, the employer may reduce the period of family leave by up to three weeks in any one-year leave period. (Note: Federal regulations prohibit reducing the period of leave under the Federal Family and Medical Leave Act, but allow the employer to delay the start of leave because of improper notice. See **29 CFR § 825.304**). The employee may also be subject to disciplinary action under the provisions of the employer's uniformly applied policy or practice of the employer which is consistent with discipline for similar violations of comparable rules of the employer. No reduction in available leave or other disciplinary action may be taken unless the employer has posted the required Bureau of Labor and Industries Family Leave notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement.

(5) If the employer requires written notice of the need for family leave, the notice may include the information in the suggested "Notice of Request for Family Leave" form attached as **Appendix 1**.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 6, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

## **839-009-0260**

### **Medical Verification and Scheduling of Treatment**

(1) An employee who gives 30 days notice of intent to take family leave other than parental leave may be required by the employer to provide medical verification of the need for leave before the leave starts. The verification may include the information in the suggested "medical certification" form attached as **Appendix 2**.

(2) If an employee starts leave with less than 30 days notice the employee must provide medical verification within 15 days of a request for verification by the employer.

(3) If a request for leave is made because of a serious health condition, the employer may require the employee to obtain the opinion of a second person who is qualified to be a health care provider, designated by the employer, at the employer's expense. If the opinion of the second provider conflicts with the medical verification provided by the employee, the employer may require the two providers to designate a third health care provider to provide an opinion at the employer's expense. The opinion of the third provider shall be binding on both the employer and the employee.

(4) If an employee has taken more than three days in a one-year period for sick child leave, the employer may require medical verification. The employer must pay the cost of the verification not covered by insurance or other benefit plan. The opinion of the health care provider shall be binding. The employer may not require the employee to obtain a second opinion.

(5) Where possible the employee shall make a reasonable effort to schedule medical treatment or supervision at times that will minimize disruption of the employer's operation.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 7, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

## **839-009-0270**

### **Job Protection**

(1) The employer must return the employee to the employee's former position if the job still exists even if it has been filled during the employee's family leave unless the employee would have been bumped or displaced if the employee had not taken leave. The former position is the position held by the employee when family leave began, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same truck, delivering the same goods, on the same shift and working from the same location as when the driver started family leave.)

(2) If the position held by the employee at the time family leave began has in fact been eliminated and not merely renamed or reclassified, the employer must restore the employee to any available, equivalent position:

(a) An available position is a position which is vacant or not permanently filled;

(b) An equivalent position is a position which is the same as the former position in as many aspects as possible. If an equivalent position is not available at the employee's former job site the employee may be restored to an equivalent position within 20 miles of the former job site.

(3) Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provides otherwise, the employee on family leave does not accrue seniority, bonuses or other benefits that would accrue while the employee is working. All employment benefits accrued prior to taking family leave shall be reinstated at the same level, except for the benefits used while on leave.

(4) Benefits to which the employee was entitled prior to starting leave must be restored in full upon the employee's return to work unless those benefits have been eliminated or altered for similarly situated employees. (For example, an employer's medical insurance requires a three month waiting period for health insurance coverage. An employee works seven months, takes family leave for 12 weeks and returns to work with health problems. The employee must be covered immediately.) This applies to all benefit provisions.

(5) An employer may require an employee to follow the employer's established leave policy regarding periodic reporting to the employer of the employee's current status. Before restoring the employee to work after leave for the employee's own serious health condition, the employer may require the employee to present certification from the employee's health care provider that the employee is able to resume work.

(6) If the employer pays (voluntarily or, directly or indirectly, as required by state or federal statute), any part of the employee's share of health or other insurance coverage, while an employee is on family leave the employer may deduct up to 10 per cent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(7) If the employee fails to return to work, unless because of a serious health condition for which the employee would be entitled to family leave or another circumstance beyond the employee's control, the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting it from the final paycheck.

(8) If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under OFLA cease.

(9) Except as provided in these rules, the employee has no greater right to a job or other employment benefits than if the employee had not taken leave.

(10) An employer may not use the provisions of this section as a subterfuge to avoid the employer's responsibilities under OFLA.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 8, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

## 839-009-0280

### Use of Paid Leave

(1) The Oregon Family Leave Act does not require that family leave be paid leave except under the following circumstances:

(a) An employee may use vacation leave, sick leave or any paid leave to which the employee is entitled if to do so is consistent with a collective bargaining agreement or the employer's policy;

(b) An employee may use accrued vacation leave when taking family leave; and

(c) An employee may use accrued sick leave when taking parental leave.

(d) As used in subsection (c) of this section, accrued sick leave does not include disability insurance or disability benefits.

(2) Subject to the terms of a collective bargaining agreement or other employment agreement, the employer may require an employee to use paid leave during family leave, if available, and may determine the order in which paid leave is to be used if more than one type of leave is available. The employer may exercise these prerogatives only if, prior to the commencement of family leave, or within two days of the employee's notice of unanticipated or emergency leave, the employer notifies the employee that it will require the employee to use accrued paid leave.

(3) Either the employee or the employer may choose to have the employee's family leave entitlement run concurrently with a Workers' Compensation absence or with other paid or unpaid leave provided under the employer's policy.

(4) The employer shall notify the employee that accrued paid leave shall be used during family leave either:

(a) Prior to the commencement of family leave; or

(b) Within two days of the employee's notice of unanticipated or emergency leave.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 9, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0290**

**Special Rules for Public School Teachers**

- (1) The provisions of this section apply only to employees who are employed by a school district principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.
- (2) If a public school teacher:
  - (a) Requests leave because of the serious health condition of the teacher or a member of the teacher's family; and
  - (b) The need for the leave is foreseeable; and
  - (c) The teacher would be on family leave for more than 20 per cent of the total number of working days during the period over which the leave would be taken; then
  - (d) The employer may require the teacher to elect one of the following two options:
    - (A) To take family leave for one uninterrupted period of time as necessary to complete medical treatment. (School holidays and school vacation days are not counted as family leave); or
    - (B) To transfer temporarily into an available alternative position which better accommodates periodic absences.
- (3) If a teacher begins family leave more than five weeks before the end of the academic term because of the teacher's own serious health condition, the employer may require the teacher to remain on leave until the end of the term if:
  - (a) The family leave is at least three weeks long; and
  - (b) The teacher's return to work would occur within three weeks of the end of the term.
- (4) If a teacher begins family leave within five weeks of the end of the academic term because of parental leave or the serious health condition of a family member, the employer may require the teacher to remain on family leave through the end of the term if:
  - (a) The leave is at least two weeks long; and
  - (b) The teacher's return would occur within the last two weeks of the term.
- (5) If a teacher begins family leave within three weeks of the end of the academic term because of parental leave or to care for a family member with a serious health condition and the leave is greater than five working days, the employer may require the teacher to remain on family leave until the end of the term.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 9, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0300**

**Postings**

Each covered employer must display the Bureau of Labor and Industries Family Leave notice in an area accessible to and regularly frequented by employees in each building or worksite where employees are located. Failure to post the family leave notice is an unlawful employment practice as provided in ORS 659.010(14).



Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 10, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0310**

**Transitional Rule**

Upon the effective date of OFLA, if any employee has taken or is taking leave within the one-year period defined by OAR 839-009-0210 (12) for any of the purposes provided by OFLA, such leave will count as OFLA leave.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 5, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

**839-009-0320**

**Enforcement/Retaliation**

- (1) In accordance with the provisions of the Oregon Family Leave Act an eligible employee who claims a violation of the Act may file a complaint with the Civil Rights Division of the Bureau of Labor and Industries in the manner provided by ORS 659.040.
- (2) It is an unlawful employment practice for an employer to retaliate or in any way discriminate against an employee with respect to hire, tenure or any term or condition of employment because the employee has inquired about family leave, submitted a request for family leave or invoked any provision of the Oregon Family Leave Act.

Stat. Auth.: ORS 659.103

Stats. Implemented: Sec. 11, Ch 580, OL 1995

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 10**

**DISCLOSURES BY PUBLIC EMPLOYEES (WHISTLEBLOWING)**

**839-010-0000**

**Statement of Purpose**

- (1) The Oregon Whistleblower Statutes, ORS 659.035, and 659.505 to 659.545, prohibit public employers from interfering with or disciplining employees because they have responded to requests by representatives of the legislature to discuss activities of the state, its agencies or political subdivisions. The law also prohibits disclosure by a public employer of the identity of employees who report evidence of a violation of law, mismanagement, abuse of authority or public endangerment resulting from an action by the state, a state agency or a political subdivision as well as protecting employees from interference or discipline.
- (2) ORS 659.525 requires public employers and employees to cooperate with law enforcement agencies and to report those persons receiving services, benefits or assistance whom they believe to be subject to a misdemeanor or felony arrest warrant. The employee shall make the report as provided in ORS 659.525.
- (3) The Civil Rights Division of the Oregon Bureau of Labor and Industries enforces the provisions of the Oregon Whistleblower Statutes which prohibit discrimination because of whistleblowing activities. These rules apply to all such complaints and inquiries received on or after the effective date of these rules.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0010**

**Definitions**

As used in these rules:

- (1) "Abuse of authority" means to deliberately exceed or make improper use of delegated or inherent authority or to employ it in an illegal manner.

(2) "Civil proceeding" includes any action taken pursuant to a civil court complaint and includes actions brought before regulatory agencies.

(3) "Disciplinary action" means any adverse dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal or withholding of work, whether or not the action affects or will affect employee compensation.

(4) "Public employee" means a person employed by or under contract with:

(a) The state or any agency of the state or political subdivision in the state;

(b) Any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) A public corporation created under ORS 656.751;

(d) A contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and

(e) Any person authorized by contract to act on behalf of the state, agency or subdivision.

(5) "Gross waste of funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

(6) "Mismanagement" means the exercise of an executive function in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

(7) "Reckless disregard for its truth or falsity" means a conscious disregard of a substantial and justifiable risk that the information disclosed is false.

(8) "Substantial and specific danger" means a risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence which a reasonable person would observe in the same situation.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96

## 839-010-0020

### Employers Covered by ORS 659.510 and 659.535

ORS 659.035(1)(b) limits employers subject to ORS 659.510 and 659.535 to those who are public employers. "Public employer" means the state or any agency of or political subdivision in the state, and any person authorized to act on behalf of the state or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee.

Stat. Auth.: ORS 659.505 - 659.545

Stats. Implemented: ORS 659.505 - 659.545

Hist.: BL 9-1991, f. & cert. ef. 8-29-91

## 839-010-0030

### Persons Protected by ORS 659.510 and 659.535

To be protected under ORS 659.510 and 659.535 a person must be an employee, as defined by OAR 839-010-0010(1), of a public employer.

Stat. Auth.: ORS 659.505 - 659.545

Stats. Implemented: ORS 659.505 - 659.545

Hist.: BL 9-1991, f. & cert. ef. 8-29-91

## 839-010-0040

### Discussions With Representatives of the Legislative Assembly

(1) ORS 659.510(1)(a) and (d) require that a public employer not prohibit, discourage, restrain, dissuade, coerce, or otherwise interfere with any employee responding to an official legislative request to discuss the activities of the state, any branch, agency, or political subdivision thereof, or the activities of any person authorized to act on behalf of those entities:

(a) An official legislative request, whether oral or in writing, must be made by or at the direction of a member of the Legislative Assembly and must invite discussion with a member of the Legislative Assembly or legislative committee staff acting under the direction of a member of the Legislative Assembly;

(b) No employee shall be required to inform the employer prior to engaging in the requested legislative discussion except when the legislative request for information is directed to the agency and the employee will speak or testify on behalf of the agency;

(c) Regarding legislative testimony or discussion with representatives of the Legislative Assembly, the Whistleblower Law does not:

(A) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(B) Authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation, or allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505 or ORS 659.525;

(C) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action.

(d) An employee is not entitled to leave work without following the employer's applicable rules and policies pertaining to leave, unless the employee is requested by a member of the legislative assembly or a legislative committee to appear before a legislative committee. If the employee's testimony is so requested, the employee may elect to take personal time off in accordance with the employer's normal procedure, or

(A) The employer may confirm the date and time for testimony but may not inquire into the substance of the testimony. The employer shall excuse the employee's absence from work during the time required for testimony and travel to and from the location of the committee:

(i) If an employee appears to testify and testimony is not taken at the designated date and time, the absence shall be

treated in the same manner as if the testimony had been taken;

(ii) If an employee is subsequently recalled to testify the subsequent request shall be treated by the employer and employee in the same manner an initial request is treated.

(B) An employee may take time off to testify following the employer's regular time off policy without notifying the employer of the purpose of the absence.

(2) No public employer shall take any disciplinary action against an employee for employee activity described by ORS 659.510(1)(a); except, however, an employer is not precluded from taking disciplinary action if the information disclosed by the employee is known to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health and safety.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96

## **839-010-0050**

### **Disclosure of Malfeasance**

(1) ORS 659.510(1)(b) and (d) require that a public employer not prohibit, discourage, restrain, dissuade, coerce, or otherwise interfere with any employee disclosing to any person, or take or threaten to take disciplinary action against an employee for disclosing any information that the employee reasonably believes is evidence of:

(a) A violation of any federal or state law, rule or regulation by action of the state agency or political subdivision;

(b) Mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety, resulting from action of the state, agency or political subdivision.

(2) No employee shall be required to give notice to a public employer prior to making any disclosure described in this rule. If the employee elects to give notice to the employer the employer must protect the employee against retaliatory or disciplinary action by its supervisory personnel for such disclosure.

(3) In making disclosures described in this rule, the Whistleblower Law is not intended to:

(a) Authorize an employee to represent the employee's personal opinions as the opinions of the agency or subdivision;

(b) Authorize an employee to disclose information required to be kept confidential under state or federal law, rule or regulation, or allow disclosure of records exempt from disclosure except as provided in ORS 192.501 to 192.505, or as required by ORS 659.525;

(c) Prevent public employers from prohibiting employee disclosure of information of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action.

(4) An employee is not entitled to leave the employee's assigned work areas during normal work hours without following applicable rules and policies pertaining to leaves, unless the employee is requested by a member of the Legislative Assembly or a legislative committee to appear before a legislative committee (see OAR 839-010-0040(1)(d)).

(5)(a) No public employer shall identify the employee who discloses matters described in this rule to any person without

the written consent of the employee, during any investigation of the information provided by the employee;

(b) No supervisory or management employee of a public employer shall reveal to an employee accused of malfeasance the identity of the employee who discloses matters described in this rule.

(6) No public employer shall take any disciplinary action against an employee for employee activity described by this section; except, however, an employer is not precluded from taking disciplinary action if the information disclosed is known by the employee to be false, if the employee discloses the information with reckless disregard for its truth or falsity, or the information disclosed relates to the employee's own violations, mismanagement, gross waste of funds, abuse of authority, or endangerment of the public health or safety.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0060**

**Reports Concerning Arrest Warrants for State Beneficiaries**

(1) ORS 659.525 requires a public employee who reasonably believes that a person receiving services, benefits or assistance from the state or any agency or political subdivision thereof is subject to an arrest warrant, to promptly report or cause to be reported specified information to his or her immediate supervisor or a person designated by the agency to receive such report. That recipient shall promptly notify the Oregon State Police of the information supplied by the employee.

(2) Such report is authorized, notwithstanding confidentiality provisions of state or federal law, rule or regulation.

(3) No public employer shall identify the employee who makes such a report or causes such a report to be made without the written consent of the employee during any investigation of information provided by the employee.

(4) No public employer shall invoke or impose any disciplinary action against an employee for making a report required by ORS 659.525; except, however, an employer is not precluded from taking disciplinary action if the information disclosed by the employee is known to be false, or if the employee discloses the information with reckless disregard for its truth or falsity.

Stat. Auth.: ORS 659.505 - 659.545

Stats. Implemented: ORS 659.505 - 659.545

Hist.: BL 9-1991, f. & cert. ef. 8-29-91

**839-010-0070**

**Procedures Regarding Violation of ORS 659.510 and 659.535**

In accordance with ORS 659.035, an individual who claims a violation of ORS 659.510 or 659.535 or these rules may file a complaint with the Civil Rights Division. (See OAR 839-003-0025: Filing a Complaint.)

Stat. Auth.: ORS 659.505 - 659.545

Stats. Implemented: ORS 659.505 - 659.545

Hist.: BL 9-1991, f. & cert. ef. 8-29-91

**Employee Disclosures (Whistleblowing)**

**839-010-0100**

**Statement of Purpose**

(1) ORS 659.550 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against an employee because the employee has:

- (a) In good faith reported criminal activity to a law enforcement agency; or
- (b) Caused in good faith a complainant's information or complaint to be filed against any person; or
- (c) Cooperated in good faith with a law enforcement agency criminal investigation; or
- (d) Brought in good faith a civil proceeding against the employee's current employer; or
- (e) Testified in good faith at a civil proceeding or criminal trial.

(2) The Civil Rights Division of the Oregon Bureau of Labor and Industries enforces the provisions of the Oregon Whistleblower Statutes which prohibit discrimination because of whistleblower activities. These rules apply to all such complaints and inquiries received on or after the effective date of these rules.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0110**

**Reporting Criminal Activity**

- (1) To be protected by this section, the criminal activity reported must be a violation, misdemeanor or felony either in the jurisdiction in which the act occurred or in which it was reported.
- (2) The criminal activity must be reported to a police agency or prosecutor.
- (3) The employer must know that a complaint was made or believe that a complaint was made.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0120**



**Complainant's Information or Complaint**

An employee is protected by this section if the employee has caused criminal charges to be brought against any person by either complainant's information or a complaint. (See ORS 131.005(3) & (4)).

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0130**

**Cooperating in a Criminal Investigation**

An employee who cooperates, whether by subpoena or not, in an investigation conducted by a law enforcement agency is protected by this section.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0140**

**Bringing a Civil Proceeding**

- (1) To be covered by ORS 659.550 the civil proceeding must have been initiated by the employee against the employee's current employer.
- (2) Civil proceedings include those before regulatory agencies as well as courts.
  - (a) Regulatory agencies include licensing agencies of any type.
  - (b) If the complaint is before a regulatory agency, civil proceedings and penalties or injunctive relief must be possible in order to invoke protection by ORS 659.550.
- (3) The employer must know or believe that a civil proceeding was initiated.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BL 10-1996, f. & cert. ef. 12-4-96

**839-010-0150**

**Testifying at a Civil Proceeding or Criminal Trial**

An employee who testifies, whether by subpoena or not, in a civil proceeding or criminal trial is protected by this section.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

**839-010-0160**

**Procedures Regarding Violation of ORS 659.550**

Anyone claiming a violation of ORS 659.550 or these rules may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025.

Stat. Auth.: ORS 659.103

Stats. Implemented: ORS Ch. 659

Hist.: BL 4-1996, f. & cert. ef. 3-12-96

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 11**

**APPRENTICESHIP AND TRAINING COUNCIL**

**General Rules**

General rules of procedure governing the conduct of hearings for adopting, amending, and revoking substantive rules were adopted by the Bureau of Labor and Industries November 11, 1959, and filed with the Secretary of State November 25, 1959, as Administrative Order BL 43.

These rules relate to internal procedures; pursuant to ORS 183.380, they are not published in the Oregon Administrative Rules Compilation. Copies may be obtained from the Secretary of State as provided by ORS 183.050.

**839-011-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule, the Apprenticeship and Training Council shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 calendar days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the Apprenticeship and Training Council's mailing list established pursuant to ORS 183.335(7) at least 28 calendar days prior to the effective date.
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
  - (a) Oregon AFL-CIO;
  - (b) State Building Trades Council;
  - (c) State Department of Education;
  - (d) Associated Oregon Industries;
  - (e) Building Codes Agency;

- (f) United Metal Trades Association;
- (g) Associated General Contractors;
- (h) Associated Builders and Contractors;
- (i) United States Department of Labor, Bureau of Apprenticeship and Training;
- (j) Associated Press;
- (k) Labor Press.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 183.335(7) & 183.360

Hist.: BL 187, f. & ef. 2-19-76; BL 4-1985, f. & ef. 8-8-85, Renumbered from 839-011-0117; BL 1-1991, f. & cert. ef. 1-23-91; BL 3-1994, f. & cert. ef. 6-3-94; BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0010**

**Model Rules of Practice and Procedure**

Pursuant to ORS 183.341, the Apprenticeship and Training Council adopts the Attorney General's Model Rules of Procedure, effective November 4, 1991, as the Council's rules of administrative procedure. The Model Rules shall control such procedures except as otherwise required by statute or this rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183 & 344.745(1) & 660.120(1)

Stats. Implemented: ORS 183.341

Hist.: BL 121(Temp), f. & ef. 3-24-72; BL 127, f. 7-27-72, ef. 8-15-72; BL 130, f. 10-5-72, ef. 10-15-72; BL 163(Temp), f. 6-19-74, ef. 6-19-74; BL 167, f. 9-20-74, ef. 10-11-74; BL 188, f. & ef. 4-7-76; BL 1-1979, f. & ef. 1-23-79; BL 11-1982, f. & ef. 7-20-82; BL 4-1985, f. & ef. 8-8-85, Renumbered from 839-011-0118; BL 13-1988, f. & cert. ef. 7-1-88; BL 1-1991, f. & cert. ef. 1-23-91; BL 7-1993, f. & cert. ef. 7-12-93

**839-011-0015**

**Rules of Order**

The Council adopts Roberts Rules of Order for the conduct of meetings; provided, however, that specific Administrative Rules of the Council will take precedence over Roberts Rules of Order.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0020**

**Date and Location of Council Meetings**

The Council will hold at least four regular public meetings each year as required by ORS 660.120(2)(g). The date of the next regular Council meeting will be designated by the Chair and will be announced at each Council meeting. Meetings may be scheduled at any location within the State of Oregon selected by the Chair.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120(2)(g)

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0025**

**Meetings and Notice**

The Director shall follow the procedures established by the Public Meetings Law, ORS 192.610 to 192.690, to provide notice of Council meetings.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 192.610 - 192.690

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0030**

**Preparation of Agenda**

(1) All matters to be included on the agenda must be submitted to the Director by 5 p.m. 30 calendar days prior to the date of the next Council meeting. If the 30th calendar day prior to the next Council meeting falls on either a weekend or holiday, the items for the agenda will be submitted to the Director on the last business day prior to the 30th calendar day.

(2) All matters on the agenda requesting Council to approve, modify or revoke standards, committees or programs shall be submitted to the Director pursuant to section (1) of this rule.

(3) All other matters to be included on the agenda must be submitted in writing to the Director.

(4)(a) Late submissions for inclusion on the agenda which do not request Council to approve, modify or revoke standards, committees or programs may be considered by Council if a majority of the members agree;

(b) Items approved pursuant to subsection (4)(a) of this rule shall be appropriately placed on the agenda by the Chair.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120(1)

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91; BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0040**

**Participation by the Public**

(1) The Council encourages public participation at Council meetings. Persons not members of the Council who desire to address the Council are required to:

(a) Request to address the Council by signing up to speak at the meeting. A sign-up sheet will be available in the Council meeting room approximately one-half hour before the scheduled meeting time. Individuals who fail to sign may address the Council at the discretion of the Chair;

(b) Indicate on the sign-up sheet:

(A) Name;

(B) Who he/she represents;

(C) Agenda number;

(D) Subject;

(E) Pro or con (if applicable).

(c) Limit initial comments to five minutes per speaker; and

(d) Limit rebuttal to three minutes.

(2) No more than three persons other than members of the Council and Apprenticeship and Training Division staff will be allowed to speak on either side of an issue.

(3) The Chair may request further comment or information, or to allow rebuttal.

(4) The Council may end debate at any time.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0050**

**Certificate of Meritorious Service**

The Council may grant a certificate of meritorious service to individuals based on either:

(1) Recommendations of joint committees; or

(2) Motion of a Council member.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0060**

# **Charges for Copies, Reports and Documents**

(1) The Apprenticeship and Training Division of the Bureau of Labor and Industries shall make available any record in its possession, requested by any person pursuant to ORS 192.240, provided that the request is in writing and the record requested is not exempt from disclosure under the provisions of ORS Chapter 192, other applicable law, or required to be kept confidential by contract. A reasonable period of time is to be allowed for the Bureau to locate and retrieve records.

(2) The Bureau of Labor and Industries shall charge, unless otherwise specified in OAR Chapter 839, the person requesting the records 15 cents per page payable upon receipt of the copy(s) as reimbursement for the actual costs of searching, reviewing, gleaning, compiling, printing and photocopying the record(s) requested, plus any applicable delivery costs or postage. The Bureau shall charge for copies sent by facsimile (fax) machine \$5 for the first page and \$2 for each page thereafter. The Bureau shall charge \$7.50 per tape for copies of audio cassette tapes.

(3) Where the request is to inspect records, the Bureau may place restrictions upon where the information requested will be made available for inspection. Where the Bureau allows the person requesting the information to search or inspect Bureau records, the Bureau may assign, as it deems necessary for the protection of the records, an employee to supervise the search. The charge for this service will be in accordance with sections (4) and (5) of this rule.

(4) Where a request for records requires substantial employee time to comply, the Bureau may charge the person requesting the records the actual costs incurred by the Bureau including:

(a) The time spent by employees in locating, reviewing, gleaning, compiling, printing, photocopying the records, supervising a record search, and where applicable, preparing the records for delivery or mailing; and

(b) The costs of any necessary review by the Attorney General.

(5) Staff time required to comply with a request for public records shall be billed at a rate not to exceed \$15 per hour for time spent by a clerical employee and not to exceed \$20 per hour for time spent by a supervisory employee. Where applicable, the fee will be prorated for fractions of hours spent.

(6) The Bureau of Labor and Industries may require that all fees assessed pursuant to this rule be paid in cash prior to furnishing any copies, material, or information requested.

(7) The Commissioner may waive the requirements to pay the charges described in this rule, or any part thereof, where the Commissioner determines that assessment of those charges would cause an undue hardship to the individual requesting public records and where waiver of the requirement would serve to promote compliance with the laws enforce by the Bureau.

Stat. Auth.: ORS 344.745(1) & 660.120(1)

Stats. Implemented: ORS 344.745(1)

Hist.: BL 4-1985, f. & ef. 8-8-85; BL 1-1991, f. & cert. ef. 1-23-91; BL 7-1993, f. & cert. ef. 7-12-93; BL 6-1994, f. & cert. ef. 10-10-94; BL 7-1996, f. & cert. ef. 7-22-96

## **Formation, Composition and Dissolution of Local Committees; Legislation of Agreements**

**839-011-0070**

## Definitions

- (1) "Apprentice" means a worker at least 16 years of age, except where a higher minimum age is otherwise required by law, who is employed to learn an apprenticeable occupation under standards of apprenticeship approved by the State Apprenticeship and Training Council, as defined in ORS 660.010.
- (2) "Apprenticeable Agreement" means a written agreement between an apprentice and either the employer or the local joint committee which shall contain the minimum terms and conditions of the employment and training of the apprentice, as defined in ORS 660.010.
- (3) "Chair" means the Commissioner of the Oregon Bureau of Labor and Industries who serves as chairperson of the Council pursuant to ORS 660.110(5).
- (4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, as defined in ORS 660.010.
- (5) "Council" means the State Apprenticeship and Training Council, as defined in ORS 660.010.
- (6) "Council Secretary" means the Oregon State Director of Apprenticeship and Training, as set forth in ORS 660.170(1).
- (7) "Director" means the state Director of Apprenticeship and Training, as defined in ORS 660.010.
- (8) "Employer" as defined in ORS 660.010, means any approved person employing the services of an apprentice, regardless of whether such person is a party to an apprenticeship agreement with that apprentice.
- (9) "Employee" is defined as any person employed in, or active in, the applicable trade.
- (10) "Local Joint Committee", as defined in ORS 660.010, includes local joint apprenticeship committees, local joint training committees and trade committees.
- (11) "Minimum Guideline Standards" means industry/trade developed and proposed, Council approved, benchmarks representing the fundamental requirements necessary for entry into, and completion of specific OSATC approved occupational/trade programs.
- (12) "Program", as defined in ORS 660.010, means the total system of apprenticeship as operated by a particular local joint committee, including the committee's registered standards and all other terms and conditions for the qualification, recruitment, selection, employment and training of apprentices in that apprenticeable occupation.
- (13) "Registration of an Apprenticeship Agreement" means the acceptance and recording of the agreement by the Apprenticeship and Training Division on behalf of the Council. Registration is evidence of the participation of the apprentice in a registered program.
- (14) "Standards" means a written agreement submitted by a local joint committee and approved by the Council, which sets forth a plan containing all terms and conditions for the qualification, employment and training of apprentices or trainees as set forth in ORS 660.126 and 660.137.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92); BL 6-1994, f. & cert. ef. 10-10-94

## Joint Committees



**839-011-0072**

**Formation of Joint Committees**

- (1) Any person or group interested in forming a joint committee should contact the nearest office of the Apprenticeship and Training Division, Oregon Bureau of Labor and Industries.
- (2) The person or group, with the assistance of staff will set a date for an organizational meeting.
- (3) At the organizational meeting, participants excluding staff will:
  - (a) Adopt Roberts Rules of Order;
  - (b) Specify the committee name, its geographical jurisdiction, and the occupation or occupations in the case of the trades;
  - (c) Elect a chair and a secretary, one of whom shall represent employees, the other of whom shall represent employers;
  - (d) Select committee member nominees and submit their names pursuant to OAR 839-011-0074 on member selection.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120(2)(c) & 660.135(1), (2), (3), (4), & (5)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0073**

**Committee Policies**

Pursuant to ORS 660.120(2)(a) all local apprenticeship and training committees shall develop and consistently administer policies when the Council directs them to do so.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.137(2)

Hist.: BL 8-1992, f. & cert. ef. 6-15-92; BL 1-1995, f. & cert. ef. 8-14-95

**839-011-0074**

**Committee Member Selection, JATC/JAC, TATC/TAC**

- (1) New Committees:
  - (a) Members for a new JATC/JAC committee are selected as follows:
    - (A) Representatives of employers, or an employer organization that represents the industry, shall submit nominations for not more than four principal employer committee members to the Director;
    - (B) Representatives of employees, or an employee organization that represents the concerned employees and that is

involved with the concerned occupation, shall submit nominations for not more than four principal committee members to the Director. For the purposes of these rules, an individual is eligible to serve as an employee representative only if he/she is or has been a skilled practitioner in the occupation he/she represents and does not serve in a supervisory capacity as defined in the National Labor Relations Act (as amended); or is a bargaining unit representative for the employees of an employer(s) recognized as an approved training agent by the committee.

(b) Members for a new TATC/TAC committee are selected as in subsection (1)(a) of this rule *except*: Only one employee representative and one employer representative is necessary for each concerned occupation within the TATC/TAC;

(c) The Director shall list the names of the nominees on the next Council agenda;

(d) After consideration of whether the appointments provide a balanced representation of the viewpoints of employer and employee groups, the Council will approve equal numbers of employers and employees to each committee;

(e) The Council may request the names of additional nominees if it does not approve of one or more of the nominees.

(2) Member Vacancies: When a member vacancy occurs on a committee, it shall be filled in accordance with the member selection process contained in subsection (1)(a) of this rule.

(3) If either employers or employees cannot or will not recommend nominees for the committee, the Apprenticeship Consultant for the area may recommend member(s) involved with the concerned occupation, and forwarding the name of the individual(s) to the Director. The Director will evaluate the individual(s), and if appropriate, submit the names of the individual(s) to the Council for approval according to the procedures of section (1) of this rule.

(4) Alternate Committee Members:

(a) There shall be one, but no more than one, alternate committee member for each principal committee member and they shall be selected according to the procedures to select the principal committee members as set forth in this rule;

(b) Alternates shall serve in the absence of a principal members consistent with ORS 660.135(2):

**"The alternate members may attend all committee meetings, participate in discussions and perform such duties as may be delegated to them by the committee, but may not vote at committee meetings except when actually serving to substitute for an absent principal committee member for their respective employer or employee".**

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.145

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91

## 839-011-0078

### Removal of Committee Members

(1) The Council will remove committee members only for inactivity, inadequate activity, or failure to abide by ORS Chapter 660, or the rules and policies of the Council, pursuant to ORS 660.120(2)(d).

(2) The Council may also remove committee members upon the recommendation of the committee as set forth in section (3) of this rule. Each committee will establish its own written policy on what constitutes activity or inactivity.

(3) Committee(s) may recommend removal of a member subject to the following conditions:

- (a) Only employer committee members may recommend and vote for removal of an employer member and such action shall be noted in the committee meeting minutes;
  - (b) Only employee committee members may recommend and vote for removal of an employee committee member and such action shall be noted in the committee meeting minutes;
  - (c) If the committee is a trade committee, only employer committee members may recommend and vote for removal of an employer member from another occupation within the committee, while only employee committee members may recommend and vote for removal of an employee member from another occupation within the committee and such action shall be noted in the committee meeting minutes.
- (4) The Director shall include such recommendations as recorded in committee meeting minutes on the Council Agenda.
- (5) Notwithstanding OAR 839-011-0074, the Council may appoint a replacement committee member at the same meeting at which it removes a member.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120(2)(d)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0082**

**Dissolving Committees**

The Council will dissolve committees for inactivity, inadequate activity, or failure to abide by ORS Chapter 660 or the rules and policies of the Council pursuant to ORS 660.120 (2)(d), or if the committee has informed the Director or the Council that it will no longer perform its duties.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120(d)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0084**

**Additional Committees**

Any additional committees in an area already served by a committee in the same trade, craft or occupation shall be established in the same manner as any other joint committee.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.135(1)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0086**

**Division Service to Committees**

No Division staff may be elected, or appointed to any position within a committee.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.135(2) & (5)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91

**Apprenticeship Agreements**

**839-011-0088**

**Registration of Apprenticeship Agreements**

(1) The Council delegates registration of apprenticeship agreements to the Apprenticeship and Training Division, and recognizes an agreement as registered when:

- (a) It is on a form which has been approved pursuant to ORS 660.020;
  - (b) Information requested on the form as authorized by ORS 660.020 has been supplied by the apprentice. The requested information includes, but is not limited to:
    - (A) Social Security Number for identification purposes only; and
    - (B) The apprentice's signature indicating the release/non-release of information to the Shared Information System.
  - (c) It has been signed by the apprentice, and the local joint committee acting as the employer's agent; or the apprentice's employer with approval of the local joint committee pursuant to joint committee rules. Approval must be recorded as soon as possible at a committee meeting;
  - (d) A copy of the agreement has been submitted to and accepted by a representative of the Apprenticeship and Training Division.
- (2) The local Apprenticeship and Training Division office will forward the agreement to the Division's main office where all agreements shall be maintained.

Stat. Auth.: ORS 660.120(1) & 660.020

Stats. Implemented: ORS 329.965 & 660.060(8)

Hist.: BL 6-1985, f. & ef. 10-15-85; BL 1-1991, f. & cert. ef. 1-23-91; BL 7-1996, f. & cert. ef. 7-22-96

**839-011-0090**

**Causes for Disciplinary Actions by Council**

The Council has the authority to take disciplinary action against a committee for conduct or action, including but not limited to:

- (1) Inappropriate use of an apprentice's or apprentices' time, skills or training;

- (2) Inadequate training of an apprentice or apprentices;
- (3) Inappropriate assignment or abuse of discretion in work assignments;
- (4) Discriminatory action(s) against an apprentice or apprentices;
- (5) Violation of any state or federal law; or
- (6) Any other action deemed inappropriate by the Council.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1) & (2)(d)

Hist.: BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0093**

**Disciplinary Procedures**

The Council shall establish a disciplinary procedure, to be applied prior to any disciplinary action toward a committee, consisting of but not limited to:

- (1) A request to appear before Council to present information and answer questions from the Council; and
- (2) A written notice of Council's decision in the matter.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1) & (2)(d)

Hist.: BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0095**

**Disciplinary Actions**

Where violations in the apprenticeship program by a committee are found, the Council may vote to:

- (1) Censure the committee;
- (2) Place the committee on probation for a specific period of time;
- (3) Order specific actions to correct the violations; or
- (4) Decertify the committee.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1) & (2)(d)

Hist.: BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0140**

**Rules for Approving or Disapproving Apprenticeship Standards Submitted by Appropriate Committees**

Prior to the submission of any standards or modifications thereto pursuant to ORS 660.120, 660.126 or 660.137, the Committee shall ensure the following criteria have been met:

- (1) The proposed standards have been filed with the Director in a proper and timely manner.
- (2) The proposed standards are to be submitted to the Director 30 calendar days prior to the date of the next Council meeting. If the 30th calendar day prior to the date of the next Council meeting falls on either a weekend or holiday, the items for the agenda will be submitted to the Director on the last business day prior to the 30th calendar day.
- (3) The proposed standards are to be in a form and format approved by Council, including but not limited to:
  - (a) Language and terminology as established by the Apprenticeship and Training Division;
  - (b) Hours of work processes and apprenticeship periods;
  - (c) The minimum number of journeypersons in numeric ratio to apprentices, consistent with proper supervision, training, safety, industry needs and continuity of employment in terms of job site, work force, department or plant;
  - (d) Signature sheets.
- (4) Standards not in a form or format approved by Council may be granted when they are part of BAT approved national pattern standards and are consistent with BAT regulations and guidelines, these rules and Council policies.
- (5) The Director has given adequate public notice that the Council will consider standards submitted for approval at its next meeting.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(b), 660.126 & 660.137

Hist.: BL 95, f. 8-16-65; BL 130, f. 10-5-72, ef. 10-15-72; BL 3-1978, f. & ef. 4-3-78; BL 13-1988, f. & cert. ef. 7-1-88; BL 1-1991, f. & cert. ef. 1-23-91; BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0145**

**Compliance Reviews**

Apprenticeship and Training Division staff will conduct a Compliance Review annually on a form and in a format approved by the Oregon State Apprenticeship and Training Council for all programs.

- (1) The Compliance Review shall include the following for the time period specified by the Council:
  - (a) Selection Method;
  - (b) Affirmative action, equal employment opportunity records and performance;
  - (c) Program administration and operation;
  - (d) Apprentice interviews;
  - (e) Records, including but not limited to, applications, logs, interviews, selection criteria, ranking lists, results,

committee meeting minutes, standards and any other pertinent documentation; and

(f) Compliance Review Results.

(2) The Director shall develop and maintain a reporting schedule for compliance reviews. The schedule will specify which programs are scheduled for review at a designated Council meeting. The Director shall provide a copy of the review schedule to Committee Chairpersons once a year.

(3) Upon receipt of the Compliance Review Reports the Council may take any action including the following, but not limited to:

(a) Approve the report;

(b) Refer the report back for further clarification;

(c) Extend the Compliance Review period for up to six months;

(d) Order a probationary period including more frequent and detailed program reviews;

(e) Direct compliance and/or corrective actions accordingly;

(f) Act to dissolve the committee and/or standards for cause or non-compliance; or

(g) Any other action as directed by the Council.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a) & (f)

Hist.: BL 16-1979, f. & ef. 11-8-79; BL 6-1994, f. & cert. ef. 10-10-94

## 839-011-0160

### Formation and Filling of Vacancies of State Joint Committees

State joint committees shall be formed and vacancies filled pursuant to ORS 660.155.

Stat. Auth.: ORS Ch.

Stats. Implemented: ORS 660.155

Hist.: BL 130, f. 10-5-72, ef. 10-15-72

## 839-011-0162

### Employer Training Agents

(1) Where two or more programs of the same occupation exist in the same geographical area an employer may not serve as an approved training agent for more than one such program at a time.

(2) In the event an employer has been approved as a training agent by two or more of such programs, the Division shall notify the employer and the appropriate committees of this rule and require that the employer respond within twenty working days of receipt of the notice, designating the program in which the employer chooses to continue and resigning

from all others. Such notice shall be sent by certified mail, return receipt requested.

(3) An employer who does not respond pursuant to section (2) of this rule, shall be deemed conclusively to have elected to resign as a training agent from all such programs. The Division shall notify the committees serving programs in which the employer had participated that the employer's training agent status has been revoked by operation of this rule.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.137(5)

Hist.: BL 17-1979, f. & ef. 11-8-79; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0163**

**Employer Training Agents**

No employer training agent shall be required to join an industry or trade association as a condition of approval as an approved training agent.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1)

Hist.: BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0170**

**Committee Minutes Submission and Processing**

As required in ORS 660.135(3), each committee secretary shall be responsible for the preparation, maintenance and submission of committee meeting minutes, including actions pertaining to apprentices, to the Bureau of Labor and Industries:

- (1) All committee meeting minutes shall be submitted in a format approved by the Apprenticeship and Training Division within 5 working days of the meeting.
- (2) All committee meeting minutes' action notices shall be processed by the Apprenticeship and Training Division within 5 working days of receipt of the minutes.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1) & 660.135(4)

Hist.: BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0175**

**Cancellation Notices**

All notices to appear for cancellation of apprenticeship agreements must be postmarked at least 22 calendar days in advance of the appearance date for the consideration of the cancellation.



Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS Ch. 660

Hist.: BL 6-1994, f. & cert. ef. 10-10-94; BL 11-1996, f. & cert. ef. 12-10-96

**839-011-0200**

**Equal Employment Opportunity in Apprenticeship**

The Apprenticeship and Training Council hereby adopts the **Equal Opportunity in Apprenticeship Plan**, a copy of which has been filed with the Secretary of State, and incorporated by reference as if fully set forth in these rules.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120

Hist.: BL 120, f. 2-16-72, ef. 3-1-72; BL 151(Temp), f. & ef. 12-19-73; BL 159, f. 3-8-74, ef. 4-11-74; BL 168, f. 10-11-74, ef. 11-11-74; BL 9-1978(Temp), f. & ef. 9-15-78; BL 13-1978, f. & ef. 12-8-78; BL 2-1988, f. & cert. ef. 2-19-88; BL 1-1991, f. & cert. ef. 1-23-91; BL 8-1991(Temp), f. 8-15-91, cert. ef. 9-1-91

**839-011-0250**

**Agreements During Labor Disputes**

- (1) When a labor dispute exists with an employer or prospective employer, the Oregon State Apprenticeship and Training Council will not:
  - (a) Review changes in existing standards;
  - (b) Review new standards; and
  - (c) Review information of new committees.
- (2) For purposes of this rule, a labor dispute exists for an employer where:
  - (a) There is a collective bargaining agreement in effect, or where employees have voted for a bargaining agreement; and
  - (b) There is a strike or work stoppage.
- (3) Apprentices or trainees subject to apprenticeship or training agreements and employed in an establishment involved in a labor dispute where the employees have voted for a bargaining unit and a strike is in progress are not in violation of their agreements if they leave their employment until settlement of the labor dispute.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120

Hist.: BL 7-1986, f. & ef. 7-14-86

**839-011-0260**

**Movement and Training of Apprentices within the Same Occupation**

Apprentices who are registered to a particular employer and/or committee and deployed by the employer/committee to an area outside of committee jurisdiction may receive related training with the consultation and agreement of the appropriate joint committee in the new area.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120

Hist.: BL 7-1986, f. & ef. 7-14-86; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0270**

**Administrative Cancellation or Completion of Apprenticeship Agreements**

(1) Whenever a joint committee has insufficient members to conduct business, has not met at least once within a six-month period or has been dissolved by Council, the Director may:

- (a) Cancel an apprenticeship agreement at the apprentice's request; or
  - (b) Cancel an apprenticeship agreement for good cause. For the purposes of this rule, "Good Cause" is defined by ORS 660.060(7) "**...which includes but is not limited to failure to report to work, nonattendance at related training, failure to submit work progress reports and a lack of response to committee citations, with due notice to the apprentice...**";
  - (c) Complete an apprenticeship agreement when notice has been forwarded to the Director indicating that the apprentice has complied with the required standards established by the Committee.
- (2) Such action by the Director or the joint committee shall be taken pursuant to the following procedure:
- (a) Notice shall be provided by certified mail to the apprentice, employer, committee, Council, and any interested parties prior to any action; and
  - (b) Written notice to the apprentice, employer, committee, Council, and any interested parties of the final action taken by the Director.
- (3) An apprentice may appeal an administrative cancellation as an order other than a contested case order under ORS 183.484.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 660.120(2)(f)

Hist.: BL 7-1986, f. & ef. 7-14-86; BL 1-1991, f. & cert. ef. 1-23-91

**839-011-0280**

**Electrical Apprentices -- 6,500 Hours**

(1) A Local Committee, as defined in ORS Chapter 660, may take action to permit an electrical apprentice to work

without direct supervision during their final term(s) of apprenticeship provided they have met the provisions of ORS 479.510 to 479.860 and have:

- (a) 6,500 hours of OJT approved by the appropriate Local Committee;
  - (b) Successfully completed related training appropriate to the required 6,500 hours of OJT;
  - (c) Conformed to the requirements of OAR 918-320-0190(6).
- (2) The Local Committee shall take such actions during committee meetings and detail the actions taken in committee minutes.
- (3) The Apprenticeship and Training Division shall issue special identification cards to the above designated apprentices pursuant to this rule.
- (4) The identification cards will be reissued by the Bureau of Labor and Industries Apprenticeship and Training Division upon request from Local Committees pursuant to their rerating procedure.
- (5) The format of the special identification card shall be jointly agreed to by the Building Codes Agency and the Apprenticeship and Training Division.

Stat. Auth.: ORS Ch. 660

Stats. Implemented: ORS 479.510 - 479.860 & OAR 918-320-190(6)

Hist.: BL 11-1989(Temp), f. & cert. ef. 12-26-89; BL 17-1990, f. & cert. ef. 11-23-90

**839-011-0300**

**Effective Date of Council Actions**

All Council actions, other than rulemaking, unless otherwise specified by the Council, shall be effective on the first day of the month following the Council meeting at which such action is taken.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0310**

**Apprentice Rights**

Upon registration the committee shall provide each apprentice with the following information:

- (1) Apprenticeship Standards for program in which apprentice is registered.
- (2) Committee policies.
- (3) Apprentice responsibilities as determined by the committee.
- (4) Complaint resolution procedure.

(5) Copy of apprenticeship agreement.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0320**

**Presentations to Council**

The Council shall require a Committee member or designee other than staff from either Apprenticeship and Training Division or Federal Bureau of Apprenticeship and Training to be present at the Council meeting when seeking approval for:

(1) New Committee.

(2) New Standards.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0330**

**Minimum Qualifications**

(1) The Oregon State Apprenticeship and Training Council shall not consider proposed standards, either new or revised which contain any of the following requirements within their minimum qualifications:

- (a) Must be physically able to do the job, unless it specifically references an occupational requirement, such as lifting a sack of cement to a specified height;
- (b) Color tests which are not nationally validated;
- (c) Any tests which are not nationally validated;
- (d) Applicant has a valid drivers license;
- (e) A medical exam.

(2) Standards submitted containing any of the above requirements will not be placed on the Council Agenda.

(3) The minimum qualification section of standards however, may include a note which advises applicants that employers may require a drivers license and/or medical exam as a condition of employment.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0340**

**Program Reviews**

- (1) Apprenticeship and Training Division staff will conduct a Program Review on a form and in a format approved by the Oregon State Apprenticeship and Training Council annually for the first three years for new programs and once every five years for established programs.
- (2) The Program Review shall include the following for the time period specified by the Council:
  - (a) Number of new registrations;
  - (b) Number of Completions;
  - (c) Number of Partial Completions;
  - (d) Number of Cancellations;
  - (e) EEO performance within the preceding categories; and
  - (f) Related Training records.
- (3) The Director shall develop and maintain a reporting schedule for program reviews. The schedule will specify which programs are scheduled for review at a designated Council meeting. The Director shall provide a copy of the review schedule to Committee Chairpersons once a year.
- (4) Upon receipt of the Program Review Reports the Council may take any action including the following but not limited to:
  - (a) Approve the report;
  - (b) Extend the Program Review period for up to six months;
  - (c) Order a probationary period including more frequent and detailed program reviews and direct compliance and/or corrective action accordingly;
  - (d) Act to dissolve the committee and or standards for cause or non-compliance; or
  - (e) Any other action as directed by the Council.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(1)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92); BL 6-1994, f. & cert. ef. 10-10-94

**839-011-0350**

**Committee Officers**

- (1) There shall be elected by the committee a chairperson and a secretary from the committee members. One of the offices must be held by an employer member, and one office must be held by an employee member.

- (2) The officers shall serve for no less than one year and no more than two years without a contested, secret ballot election.
- (3) In the event of a vacancy in an office, the respective employer or employee members shall elect from their representation a replacement to serve the unfilled term of office consistent with ORS Chapter 660.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0360**

**Minimum Guideline Standards**

Council shall cause to be developed/proposed minimum guideline standards and approve said standards for occupations/trades which they have determined necessary.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0370**

**Flexibility Within Minimum Guideline Standards**

Committees proposing new or revised standards affected by minimum guideline standards will be allowed to redistribute no more than 5% of total required OJT hours within existing work processes:

- (1) Total hours may not fluctuate below requirements dictated by minimum guideline standards.
- (2) No single work process, as a result of redistribution of hours, will be reduced to zero.
- (3) The variations are within statutory limits governing licensed trades, etc.

**EXAMPLE:** A program requiring 8,000 hours of OJT and related training (minimum guideline standards) can redistribute up to 400 hours within existing work processes. Redistribution must be within the parameters stated above. Total hours for this example, however, may not be less than 8,000.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**839-011-0380**

**Minimum Guideline Standards Development and Revision**

Council upon petition by two or more committees directly affected by minimum guideline standards may instruct staff to convene an industry/trade advisory committee composed of members of appropriate JATC/TATC. Division staff will organize the meeting time and location, and serve as Chair Pro Tem until the committee selects a chair. The Ad Hoc Committee will:

- (1) Review occupation and minimum guideline standards.
- (2) Develop for council approval proposed changes as may be dictated by technological change, or reorganization of work processes within the industry/trade to reflect industry practices.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 7-1991, f. & cert. ef. 8-15-91 (and corrected 2-3-92)

**Youth Apprenticeship Rules**

**839-011-0400**

**Youth Apprentice Selection Process**

The Apprenticeship Committee shall develop and upon approval of the Director of the Apprenticeship and Training Division implement a written policy for the purpose of selecting youth apprentices from the list of eligibles established by the school.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 344.745 & 660.120(2)(a)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92

**839-011-0410**

**Review Policy, Formation and Scope of Responsibilities**

A review policy shall be established by each participating Apprenticeship Committee for the purposes of periodically evaluating youth apprentices and recommending the granting of credit by the committee. The policy shall include the procedure to review the progress of the participants in the youth apprenticeship program including their participation in classroom instruction, related instruction, and on-the-job training.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 344.745(4)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92; BL 7-1993, f. & cert. ef. 7-12-93; BL 3-1994, f. & cert. ef. 6-3-94

**839-011-0420**

**Youth Apprentice Eligibility**

- (1) Committees are permitted to register youths in the Youth Apprenticeship Program who otherwise would not meet the mini-mum entry level qualifications in their standards for age, high school completion, or GED.
- (2) The provisions and requirements of ORS 344.745 shall prevail over the committee's standards should any conflict exist.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 344.745(2)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92; BL 3-1994, f. & cert. ef. 6-3-94

**839-011-0430**

**Supervision**

All students participating in the Youth Apprenticeship Program shall be under direct line of sight supervision of a journeyperson while engaged in on-the-job training within hazardous occupations as defined by OAR 839-021-0104. Students shall be under direct supervision at all other times to ensure optimal safety while on the job.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 660.120

Hist.: BL 2-1992, f. & cert. ef. 1-14-92; BL 7-1993, f. & cert. ef. 7-12-93; BL 3-1994, f. & cert. ef. 6-3-94

**839-011-0440**

**Training Agent Approval Process**

- (1) Employers approved as training agents prior to the implementation of these rules shall not automatically be eligible to participate in the Youth Apprenticeship Program. The employer must apply in writing to the appropriate committee requesting authorization to participate. The committee will review the request and respond in writing with a copy to the Director of the Apprenticeship and Training Division.
- (2) Apprenticeship Committees participating in the Youth Apprenticeship Program shall develop a Training Agent approval process for the purpose of approving training agents to participate in the Youth Apprenticeship Program.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 660.120(2)(a) & 660.137(5)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92; BL 3-1994, f. & cert. ef. 6-3-94

**839-011-0450**

**Transfer of Youth Apprentice**

It shall be the responsibility of the apprenticeship committee, in consultation with the participating school, to transfer a youth apprentice from one training agent to another within their committee when the training agent has been decertified, or for any other reasons, is unable to fully comply with the apprenticeship standards and these rules.



Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(a)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92

**839-011-0460**

**Career Exploration**

In order to participate as a youth apprentice, a student must demonstrate career exploration competencies contained in a curriculum approved by the Oregon State Board of Education.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 344.745(2)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92; BL 3-1994, f. & cert. ef. 6-3-94

**839-011-0470**

**Apprentice Displacement**

In no case shall a youth apprentice displace a regular apprentice.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.120(2)(g)

Hist.: BL 2-1992, f. & cert. ef. 1-14-92

**839-011-0480**

**Youth Apprentice Ratios**

Committees shall adopt the same ratio of journeypersons to youth apprentices as exists for adult apprenticeship programs, except that:

- (1) Youth apprentices shall not be included in the count as part of the adult apprentices, but shall be counted separately and concurrently;
- (2) A training agent is permitted to participate in the youth apprenticeship program without concurrently training/hiring adult apprentices; and
- (3) At no time shall the total number of youth apprentices and adult apprentices exceed the number of journeypersons for any job or training agent;
- (4) The ratio shall be job and/or training agent specific in application;
- (5) Approved Youth Apprenticeship training agents in the Building Construction Trades shall be permitted only one

youth apprentice without concurrently training/hiring adult apprentices.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 344.750(1)

Hist.: BL 4-1994, f. & cert. ef. 6-13-94

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 14**

**REGULATION OF FARM-WORKER CAMP OPERATORS**

**Procedural Rules**

**839-014-0020**

**Notice of Proposed Rule**

Prior to the adoption, amendment or repeal of any rule relating to farm-worker camp operations and registration of farm worker camps, the Bureau of Labor and Industries shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) By mailing a copy of the notice of intended action to persons on the Wage and Hour Division's mailing list for farm-worker camp operations established pursuant to ORS 183.335(7).
- (3) By mailing a copy of the notice of intended action to:
  - (a) The Associated Press;
  - (b) Associated Oregon Industries;
  - (c) Casa de Oregon;
  - (d) Northwest Reforestation Contractors Association;
  - (e) Oregon Farm Bureau Federation;
  - (f) Oregon Health Division;
  - (g) Oregon Legal Services Corporation, Farmworker Program;
  - (h) Oregon Occupational Safety and Health Division;
  - (i) Hood River Grower-Shipper Association;

(j) Other associations and government entities as appropriate.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 to 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0025**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective September 9, 1995, are hereby adopted by reference as permanent rules for Farm-Worker Camp Operator matters except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of ORS 658.405 to 658.465. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0035**

**Definitions**

As used in ORS 658.705 to 658.850, and in these rules unless the context requires otherwise:

- (1) "Applicant" means an individual who proposes to operate a farm-worker camp and who is applying for a camp operator indorsement.
- (2) "Bureau" means the Bureau of Labor and Industries.
- (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or designee.
- (4) "Director" means the Director of the Department of Consumer and Business Services.
- (5) "Division" means the Oregon Occupational Safety and Health Division.
- (6) "Farm labor contractor" has the same meaning as that provided in ORS 658.405 and the rules adopted thereunder.
- (7) "Farm-worker camp" means any place or area of land where sleeping places, mobile home sites or other housing is provided by a farmer, farm labor contractor, employer or any other person in connection with the recruitment or employment of workers to work in the production and harvesting of farm crops or in the reforestation of lands, as described in ORS 658.405. "Farm-worker camp" does not include:
  - (a) A single, isolated dwelling occupied solely by members of the same family, or by five or fewer unrelated individuals; or

- (b) A hotel or motel which provides housing with the same characteristics on a commercial basis to the general public on the same terms and conditions as housing is provided to such workers.
- (8) "Farm-worker camp operator," except as otherwise provided in these rules, means any person who operates a farm-worker camp and who is required to obtain a farm labor contractor license with an indorsement as provided in ORS 658.730. In determining who is a farm-worker camp operator, the Bureau will consider the farm worker camp operator to be the person who, as a practical matter, exercises the ultimate right to determine terms and conditions of occupancy of the camp and who controls its maintenance and operation.
- (9) "Forestation or reforestation of lands" includes, but is not limited to:
  - (a) The planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings;
  - (b) The clearing, piling and disposal of brush and slash; and
  - (c) Other activities related to the forestation or reforestation of lands, including, but not limited to, tree shading, pinning, tagging, or staking; fire trail construction and maintenance; slash burning and mop up; mulching of tree seedlings; and any activity related to the growth of trees and tree seedlings and the disposal of debris from the land.
- (10) "Indorsee" means a farm labor contractor licensed under ORS 658.410 who has obtained a camp indorsement.
- (11) "Production and harvesting of farm products" includes, but is not limited to, the cultivation and tillage of the soil, the production, cultivation, growing and harvesting or any agricultural commodity and the preparation for and delivery to market of any such commodity.
- (12) "Substantial ownership interest in real property" means at least a thirty percent share of the interest in the property.
- (13) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.
- (14) "Worker" has the same meaning as that which appears in OAR 839-015-0004(13).

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0040**

**Character, Competence and Reliability**

The character, competence and reliability contemplated by ORS 658.705 to 658.850 and these rules includes, but is not limited to, consideration of:

- (1) A person's record of conduct in relations with workers, farmers and others with whom the person conducts business.
- (2) A person's reliability in adhering to the terms and conditions of any contract or agreement between the person and those with whom the person conducts business.
- (3) A person's timeliness in paying all debts owed including advances and wages.
- (4) Whether a person has unsatisfied judgments or felony convictions.
- (5) Whether a person has been refused a bond.

- (6) Whether a person has paid worker's compensation insurance premium payments when due.
- (7) Whether a person has violated any provision of ORS 658.405 to 658.850 or the rules adopted thereunder.
- (8) Whether a person has employed an agent who has had a farm or forest labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of ORS 658.405 to 658.485.
- (9) Whether a person has failed to notify the Bureau of any change in the circumstances under which a license was issued.
- (10) Whether a person has repeatedly denied access to a farm worker camp to representatives of the Wage and Hour Division who are seeking access in connection with the enforcement of ORS Chapter 658.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**Licensing**

**839-014-0050**

**Operators Must Obtain Indorsement**

Farm-worker camp operators must obtain a farm labor contractor's license pursuant to ORS 658.405 to 658.475 and the rules adopted thereunder, unless otherwise exempt pursuant to OAR 839-014-0060. Additionally, farm-worker camp operators must obtain a special indorsement from the Bureau authorizing the operator to act as such.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0060**

**Exemptions**

- (1) A building or other structure is not considered to be a farm-worker camp if it is:
  - (a) A single dwelling place, isolated and independent of other dwelling places, which is occupied solely by members of the same family;
  - (b) A single dwelling place, isolated and independent of other dwelling places, which is occupied by five or fewer persons who are unrelated to one another; or
  - (c) A hotel or motel provided that the housing provided to workers is provided under the same terms and conditions that is offered on a commercial basis to the general public.
- (2) An operator of a farm-worker camp is not required to obtain the farm-worker camp operator's indorsement when the

operator has a substantial ownership interest in the real property on which the camp is located or has any form of ownership interest in the business organization that operates the camp or is related by blood or marriage to a person with such interests provided:

- (a) The property on which the camp is located is subject to a special farm use assessment under ORS 308.345 to 308.406; and, provided further,
- (b) The business organization which operates the camp filed a Form 1120 with a Business Activity Code of 0400 as part of its income tax return in the preceding tax year.
- (3) Permanent employees of the farm-worker camp operator are not required to obtain a farm-worker camp operator indorsement, provided they have no financial interest in the camp or the business other than the wages paid to the employee.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.730(1) & 962  
Stats. Implemented: ORS 658.705(7) & 658.715(1)(b) to (2)  
Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**839-014-0075**

**Issuance of Indorsement**

- (1) An indorsement may be issued only as follows:
  - (a) To an individual licensed as a farm/forest labor contractor proposing to operate as a sole proprietor under the individual's own name or under the individual's own name and an assumed business name registered with the Corporation Division;
  - (b) To an individual licensed as a farm/forest labor contractor proposing to operate as a partner in a partnership under the individuals' own names or under the individuals' own names and the assumed partnership business name registered with the Corporation Division;
  - (c) To a majority shareholder or majority shareholders of a corporation or cooperative corporation authorized to do business in Oregon by the Corporation Division and licensed as a farm/forest labor contractor.
- (2) No indorsement may be issued to an individual proposing to do business as a partner in a partnership unless all the partners who will operate a farm-worker camp are also issued indorsements.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962  
Stats. Implemented: ORS 658.705 - 658.850  
Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0085**

**Use of Certain Agents Prohibited/Evidence of Sham or Subterfuge**

- (1) The bureau may refuse to issue indorsements to any person who proposes to use any individual, partnership, association, corporation or other entity as such persons' agent for the performance of any activity specified in ORS 658.405(1), when the proposed agent has, within the preceding three years, violated any section of ORS 658.405 to

658.485.

(2) The bureau will regard as prima facie evidence of sham or subterfuge mere changes in business form subsequent to denial, suspension, revocation or refusal to renew a license, where a relative by blood or marriage, or a person presently employed in an occupation, other than an occupation with a licensed farm or forest labor contractor, makes application, including a renewal application, for a license and indorsement if one or more of the following factors are present:

- (a) A lack of adequate consideration or value given for the former business or its property;
- (b) The use of the same real property, fixtures or equipment or use of a similar business name of the former business;
- (c) The time period elapsed between the bureau's denial, suspension, revocation or refusal to renew a license and application by the new business for a license is less than one year;
- (d) A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business;
- (e) The amount of capitalization is inadequate to meet current obligations of the new business; or
- (f) The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation.

(3) When the factors outlined in section (2) of this rule are present, it shall be the burden of the applicant to provide evidence to the bureau clearly indicating that such business form is not sham or subterfuge.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

## 839-014-0090

### Procedure for Obtaining an Indorsement

An indorsement may be applied for as follows:

- (1) File a completed application on forms supplied by the Bureau. In the case of a partnership or corporation, each partner, majority shareholder or major shareholders must complete and file a separate application form.
- (2) Pay the appropriate fees at the time the application is filed. In the case of a partnership, each partner must pay the appropriate fee.
- (3) File with the application proof of financial ability as provided for in ORS 658.415 or 658.735, whichever is greater, or a greater amount if required by the Commissioner, on forms supplied by the Bureau. In the case of a partnership, each partner must file such proof. Such proof may be a corporate surety bond, or a deposit in cash or negotiable securities acceptable to the Commissioner.
- (4) File any assumed business name and corporate name with the Corporation Division and submit proof of such filing with the application.
- (5) If a corporation, show proof of being authorized to do business in Oregon.
- (6) All forms, documents and other required information shall be filed with Bureau of Labor and Industries, Wage and



Hour Division, License Unit, 800 N.E. Oregon, #32, Portland, OR 97232.

Stat. Auth.: ORS 658.407(3), 658.415(14), 658.730(1) & 658.820

Stats. Implemented: ORS 658.415, 658.730(1)9a) & 658.735

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 10-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94

**839-014-0100**

**Procedure for Obtaining a Duplicate Indorsement**

In the event a license with the indorsement is lost or stolen, the licensee shall submit a written request for a duplicate license and indorsement. The licensee shall state the reasons for the request and the circumstances of the loss or theft. The replacement license will indicate the word "duplicate" on the license. The written request shall be made to the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0105**

**Procedure for Renewing Indorsement**

- (1) Indorsement shall expire with the farm/forest contractor's license each year unless sooner revoked.
- (2) Applications for renewal shall be made 30 days before the expiration date of the license by filing a renewal application, paying the appropriate fees, and filing proof of financial ability to pay wages and certain advances.
- (3) Applications, fees and other forms and documents must be filed with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**Examinations**

**839-014-0170**

**Scope**

- (1) The License Unit shall provide written examinations as the commissioner deems necessary.

- (2) The License Unit shall provide all materials required for the examinations except hand-held calculators or slide rules that may be used by the applicant.
- (3) All examinations shall be "closed book".
- (4) A written examination shall not exceed three hours.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0175**

**Examination Requirements**

- (1) Applicants may schedule an appointment with staff or designated proctors throughout the state to take an examination after receipt of a letter of authorization from the License Unit.
- (2) Once an applicant is authorized for examination, the applicant has 30 days in which to schedule an appointment to take the examination. Applicants shall take the examination within 45 days from the date of authorization.
- (3) To reschedule an examination after the 45 day examination period or to change the site of the examination shall require submission of a new request.
- (4) Except for hand-held calculators, and interpreters, no applicant may use any other aids or notes, or receive help from another person during an examination. Violation of this rule shall result in the examination being invalidated and treated as failed.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0178**

**Grading of Examinations/Notice of Score**

- (1) The passing score for each examination shall be 75 percent.
- (2) The License Unit shall notify the applicant by mail of the examination scores.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0180**

**Review of Examinations**

- (1) Applicants failing to pass an examination may schedule an appointment with the License Unit to review the examination at a site designated by the License Unit.
- (2) Requests to review failed examinations shall be scheduled within 30 days from notification of scores.
- (3) Applicants shall show picture identification before examination review.
- (4) Applicants reviewing failed examinations shall not be accompanied by another person during the review or retain notes taken during the review.
- (5) Examinations may be reviewed only by the applicant and/or any person who is authorized by the applicant, in writing, to do so.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0185**

**Re-Examination**

- (1) Applicants who fail an examination shall wait the following time periods before retaking the examination:
  - (a) First failure: 7 days;
  - (b) Second failure: 14 days;
  - (c) Third failure: 30 days;
  - (d) Any subsequent failures: 60 days.
- (2) Re-examinations shall not be scheduled sooner than seven days after review of a failed examination.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.730(1) & 962

Stats. Implemented: ORS 658.730(1)(b)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 6-1990(Temp), f. 4-18-90, cert. ef. 4-17-90; BL 9-1990, f. 5-25-90, cert. ef. 6-1-90

**839-014-0190**

**Substitution of Oregon Examination**

- (1) The commissioner may recognize national or state examinations for licensing if taken and passed within the last 12 months.
- (2) A specific examination that may be recognized in lieu of the Oregon examinations is the Farm Labor Contractor examination for the State of California.

(3) Independent verification of test results from the testing authority is required.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0195**

**Alternative Methods of Examination**

(1) An applicant for whom English is a second language may bring an interpreter to the examination to translate the examination questions. An interpreter may not assist an applicant in answering any question, but may translate the answers.

(2) Alternative methods of examination will be provided upon written request.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.730(1) & 962

Stats. Implemented: ORS 658.730(1)(b)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**Bonds and Deposits**

**839-014-0200**

**Proof Required/Forms to be Used**

(1) Every applicant for a farm-worker camp operator's indorsement shall, in lieu of the bond or deposit required by ORS 658.415 and unless otherwise exempt, submit a bond or deposit with the application and continually maintain a bond or deposit approved by the commissioner. The applicant may make a deposit in cash or negotiable securities acceptable to the commissioner in lieu of the bond. The bond or deposit shall be conditioned upon:

- (a) All sums legally owing to any person when the indorsee or the indorsee's agents have received such sums;
- (b) All damages occasioned to any person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee, or the indorsee's agents or employees acting within the scope of their employment; and
- (c) All sums legally owing to any employee of the indorsee.

(2) The bond referred to in section (1) of this rule shall be a properly executed corporate surety bond as evidenced by the completion of Form WH-157.

(3) The forms are available upon request from: Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0210**

**Amount of Bond or Deposit to be Filed**

- (1) The amount of the bond or deposit referred to in OAR 839-014-0200 is \$15,000, unless a greater amount is required by ORS 658.415 or by the Commissioner. The amount of the bond or deposit must be continually maintained as long as the contractor is required to be licensed under ORS 658.405 to 658.475, and is indorsed to operate a farm-worker camp.
- (2) When an applicant for a license has been required to satisfy a court-ordered Judgment or a Final Order issued by a governmental agency, the Commissioner or the Commissioner's designee may require the applicant to provide a bond or deposit of up to three times the amount required by ORS 658.415 or 658.735, whichever is greater, as a condition of licensure. In such case, the Commissioner or Commissioner's designee will determine the actual amount of the bond or deposit by considering the following factors:
- (a) The amount of the Judgment or Order that was satisfied;
  - (b) The magnitude and seriousness of the violation or violations which lead to the Judgment or Order;
  - (c) The past history of the applicant in taking all necessary measures to prevent or correct violations of statutes or rules;
  - (d) Prior violations, if any, of statutes or rules;
  - (e) Other matters which indicate to the Commissioner or Commissioner's designee that the applicant is not likely to violate ORS 658.415(3) in the future.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820(1)

Stats. Implemented: ORS 658.415(3) & 658.735(1)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 10-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94

**839-014-0220**

**Deposit in Cash or Negotiable Securities**

As used in ORS 658.735 and in these rules "a deposit in cash or negotiable securities" means a single financial instrument which yields no less than the amount required pursuant to OAR 839-014-0210 in cash immediately upon demand. If the deposit is one which is subject to a penalty for early withdrawal, then the deposit must be in an amount sufficient to satisfy the penalty and yield no less than the amount required under OAR 839-014-0210 in cash.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820(1)

Stats. Implemented: ORS 658.735(1)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 10-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94

**Indorsement Protest**

**839-014-0250**

**Protesting the Issuance of an Indorsement**

Any individual may protest the issuance of an indorsement to any applicant for such an indorsement. The protest may be made at any time after the indorsement is actually issued as well as at any time prior to the issuance of the indorsement.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.730(1) & 962

Stats. Implemented: ORS 658.730(1)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**839-014-0260**

**Procedure for Filing Protest**

- (1) Any individual desiring to protest the issuance of an indorsement must file the protest in writing with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.
- (2) The written protest must contain the following information:
  - (a) Name, address and phone number of the individual filing the protest;
  - (b) Date of the protest;
  - (c) Name of indorsee or applicant against whom the protest is being made;
  - (d) A complete statement of the facts, circumstances and other reasons for the protest. The statement should include alleged violations, approximate dates of alleged violations, names of witnesses, if any, and any documents which support the allegations;
  - (e) The signature of the individual making the protest.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**Records**

**839-014-0310**

**Required Records**

- (1) All farm-worker camp operators shall make and maintain for a period of three years records necessary to determine their compliance with ORS 658.705 to 658.850 and these rules.
- (2) Records necessary to determine compliance with ORS 658.705 to 658.850 and these rules include, but are not limited to records of:

- (a) The names and permanent home mailing addresses of each resident of the farm-worker camp;
- (b) The dates each resident resided in the camp;
- (c) Records of financial transactions between the operator and the residents;
- (d) Records of any inspection or citations of the camp issued by any agency of government responsible for health, safety or sanitation inspections, and correspondence with any such agency;
- (e) Notices posted at the camp to comply with these rules;
- (f) Any notices and rules for access to an operating telephone, pursuant to OAR 839-014-0620;
- (g) Other required records as determined by the commissioner.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0320**

**Records Availability**

A farm-worker camp operator shall make available to representatives of the Wage and Hour Division records necessary to determine compliance with ORS 658.405 to 658.475, ORS 658.705 to 658.850 and these rules. Records shall be made available upon the request of such representatives.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**Posting Requirements**

**839-014-0350**

**Notice of Compliance with Bond Requirements**

- (1) Every farm-worker camp operator who is required to furnish a surety bond, or make a deposit in lieu thereof, shall keep conspicuously posted in an exterior area of the camp which is open to all residents and in a manner easily visible to occupants of and visitors to the camp, a notice of compliance with bond requirements in both English and any other language used by the camp operator to communicate with workers.
- (2) The notice shall state that the contractor has complied with ORS 658.735, by obtaining a corporate surety bond or by making a deposit with the commissioner. The notice shall indicate the amount of the bond or deposit is conditioned on the payment of:
  - (a) All sums legally owing to any person when the indorsee or the indorsee's agents have received such sums;

- (b) All damages occasioned to any person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee, or the indorsee's agents or employees acting within the scope of their employment; and
  - (c) All sums legally owing to any employee of the indorsee.
- (3) The notice shall contain the name and Oregon address of the surety on the bond, if applicable, or the address of the bureau when a deposit is made with the commissioner.
- (4) The notice shall also indicate the expiration date of the bond or deposit.
- (5) The commissioner has prepared a notice (Form LU-121) in English and Spanish which complies with this rule. Contractors may use any form or notice so long as it contains all the elements of Form LU-121.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0360**

**Posting the Indorsement**

- (1) Every farm-worker camp operator shall keep conspicuously posted a copy of the license, with the appropriate indorsement affixed thereto, in an exterior area of the camp easily accessible to camp occupants. The license must be posted in a manner that is easily visible to the occupants of and visitors to the camp.
- (2) The license form to be posted shall be provided to the farm-worker camp operator by the Bureau at the time the licensee receives the indorsement.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.730(1) & 962

Stats. Implemented: ORS 658.730(2)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**Enforcement**

**839-014-0380**

**Action Against the Bond or Deposit**

- (1) Any person entitled to recover sums received by the indorsee or the indorsee's agents or damages occasioned to the person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee or the indorsee's agents or employees acting within the scope of their employment, or any employee of the indorsee who is legally owed any sum has a right of action against the surety on the bond or deposit with the commissioner. The individual may exercise this right or may assign this right to another.
- (2) The action on the bond or on the deposit held by the commissioner may not be joined in a suit or action on the bond or against the commissioner brought for any other claim.



(3) Any person seeking to recover on the bond or from the deposit with the commissioner must first establish the farm-worker camp operator liability. The liability may be established in any of the following ways:

(a) A judgment of the court; or

(b) A final administrative order issued pursuant to statute or rule; or

(c) The acknowledgment of the farm-worker camp operator of such liability; or

(d) Other satisfactory evidence of liability as may be shown which establishes the liability.

(4) Claims against the bond or deposit will not be paid unless, within six months of the end of the license year to which the bond or deposit applies, the claimant or claimant's assignee gives notice of the claim by certified mail to the surety or the commissioner.

(5) Any claim or notice of claim filed pursuant to a claimant's right of action must be filed as follows:

(a) If the filing is against a surety bond, the claim or notice must be filed with the surety. The name and address of the surety may be obtained from the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232;

(b) If the filing is against a deposit held by the commissioner, the claim or notice must be filed with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.

(6) The commissioner and the surety shall make payments on the bond or deposit in the following priority:

(a) Wage claims;

(b) Payments on all sums legally owing to any employee of the indorsee;

(c) Payments on all sums legally owing to any person when the indorsee or the indorsee's agents have received such sums;

(d) Payments on all damages occasioned to any person by reason of any material misrepresentation, fraud, deceit or other unlawful act or omission by the indorsee or the indorsee's agents or employees acting within the scope of their employment;

(e) If there are insufficient funds to pay all sums, in accordance with the priority of payment, in full, such sums will be paid in part.

(7) In order to insure that all priority payments, as established in section (6) of this rule, are accomplished, the commissioner may delay any payments, until the expiration of the time within which claims may be submitted. The commissioner may make conditional payment based upon adequate security that subsequent claims will be paid.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

## **Civil Penalties**

**839-014-0400**

**Definitions**

As used in OAR 839-014-0400 to 839-014-0450 "knowingly" or "wilfully" means action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts knowingly or wilfully if the person has the means to inform himself or herself but elects not to do so. For purposes of this rule, the farm-worker camp operator or any person acting as such is presumed to know the affairs of their business operations relating to farm-worker camp operations.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.820(1) & 962

Stats. Implemented: ORS

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**839-014-0410**

**Violations Separate and Distinct**

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.820(1) & 962

Stats. Implemented: ORS

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**839-014-0420**

**Violations for Which a Civil Penalty May be Imposed**

Pursuant to ORS 658.850, the commissioner may impose a civil penalty for any of the following violations:

- (1) Operating a farm-worker camp without first having obtained a farm labor contractor's license in violation of ORS 658.715;
- (2) Operating a farm-worker camp without first having obtained an indorsement to do so in violation of ORS 658.715;
- (3) Operating a farm-worker camp which is not registered with the Department of Consumer and Business Services in violation of ORS 658.755(2)(a);
- (4) Failing to post the indorsement in violation of ORS 658.730(2);
- (5) Failing to continually maintain a bond and security behind the bond in violation of ORS 658.735;
- (6) Failing to post a notice of compliance with ORS 658.735, in violation of ORS 658.735(8);
- (7) Failing to comply with the following provisions of ORS 658.755(1), as follows:

- (a) ORS 658.405 to 658.485; or
- (b) ORS Chapter 654 and the rules adopted thereunder, provided the division has determined that there has been a failure to comply with said statute and rules; or
- (c) All applicable building codes and health and safety codes; or
- (d) ORS 659.280 to 659.295 (access to farm-worker camps); or
- (e) Pay or distribute promptly, when due, to individuals entitled thereto, money or other things of value as required by ORS 658.755(1)(e); or
- (f) The terms and provisions of all legal and valid contracts or agreements as required by ORS 658.755(1)(f); or
- (8) Willfully making or causing to be made to any person any false, fraudulent or misleading representation concerning the terms and conditions of occupancy in the farm-worker camp in violation of ORS 658.755(2)(c);
- (9) Making any material misrepresentation, false statement or willful concealment in the application for an indorsement in violation of ORS 658.755(2)(b);
- (10) Knowingly publishing or circulating any false or misleading information concerning the terms, conditions or existence of housing at any place in violation of ORS 658.755(2)(d);
- (11) Knowingly publishing or circulating any false or misleading information concerning the terms conditions or existence of employment at any place in violation of ORS 658.755(2)(d);
- (12) Assisting a person who is not entitled to operate a farm-worker camp without a farm labor contractor's license with an indorsement as required by ORS 658.715 to act in violation of any of the following statutes, in violation of ORS 658.755(2)(e):
  - (a) ORS 658.705 to 658.850; or
  - (b) ORS 658.405 to 658.485; or
  - (c) ORS Chapter 654 when a violation has been determined by the division in violation of ORS 658.755(2)(e).
- (13) By force, intimidation or threat in any manner whatsoever, inducing any occupant of the farm-worker camp to give up any part of the compensation the occupant is entitled to by contract or by any state or federal wage payment law in violation of ORS 658.755(2)(f);
- (14) By force, intimidation or threat in any manner whatsoever, restraining any person who wishes to leave the camp from doing so in violation of ORS 658.755(2)(g);
- (15) Discharging, evicting or in any other manner discriminating against any person in violation of ORS 658.760; and
- (16) Failing to provide housing, without charge, when required by ORS 658.790, pursuant to the provisions of said law.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 10-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0430**

**Criteria for Determining a Civil Penalty**

- (1) The commissioner may consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be imposed, and shall cite those the Commissioner finds to be appropriate:
  - (a) The history of the farm-worker camp operator or other person 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 farm-worker camp operator or other person knew or should have known of the violation.
- (2) It shall be the responsibility of the farm-worker camp operator or other person to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be imposed.
- (3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of money or valuables, if any, taken from camp occupants by the farm-worker camp operator or other person in violation of any statute or rule.
- (4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the farm-worker camp operator or other person for the purpose of reducing the amount of the civil penalty to be imposed.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0440**

**Schedule of Civil Penalties**

- (1)The civil penalty for any one violation shall not exceed \$2,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.
- (2) For purposes of this rule, "repeated violations" means violations of a provision of law or rule which have been violated on more than one contract within 2 years of the date of the most recent violation.
- (3) When the commissioner determines to impose a civil penalty for acting as a farm-worker camp operator without a valid license indorsement, the minimum civil penalty shall be as follows:
  - (a) \$500 for the first violation;
  - (b) \$1,000 for the first repeated violation;
  - (c) \$2,000 for the second and each subsequent repeated violation.
- (4) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-014-0430.
- (5) The civil penalties set out in this rule shall be in addition to any other penalty imposed by law or rule.

Stat. Auth.: ORS 658.820

Stats. Implemented: ORS 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96

**Civil Penalties**

**839-014-0450**

**Suspension of Civil Penalty**

(1) The commissioner may suspend any civil penalty issued pursuant to ORS 658.850(3), if the matter for which the penalty was issued was corrected within 15 days of the time the operator received notice of the violation for which the civil penalty was issued. Persons desiring to have the civil penalty suspended may petition the commissioner. The petition shall contain each and every reason for the request and shall be submitted in an answer filed with the person's request for a hearing on the civil penalty action.

(2) The commissioner shall grant or deny the petition and in so doing shall consider the following factors:

- (a) The magnitude and seriousness of the violation or violations which led to the civil penalty;
- (b) The petitioner's past history in taking all necessary measures to prevent or correct violations of statutes or rules;
- (c) The petitioner's other prior violations of the statute or rules, if any;
- (d) Other matters which indicate to the commissioner that the petitioner is not likely to violate ORS 658.705 to 658.850 and these rules in the future.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0470**

**Denying, Suspending, Revoking or Refusing to Renew or Issue a License Indorsement**

(1) The commissioner may deny, refuse to issue or renew, suspend or revoke a license indorsement if:

- (a) The conditions under which the indorsement was issued have changed or no longer exist;
- (b) The indorsee's character, competence or reliability makes the indorsee unfit to act as a farm-worker camp operator;  
or
- (c) The applicant or operator makes any material misrepresentation, false statement or willful concealment on the application for a license.
- (d) The indorsee discharges, evicts or in any other manner discriminates against any person in violation of ORS 658.760.

(2) The following actions of an indorsee demonstrate that the indorsee's character, competence or reliability make the licensee unfit to act as a farm-worker camp operator:

- (a) Operation of a farm-worker camp without a valid indorsement;
- (b) Operation of a farm-worker camp without a valid registration certificate when the contractor is required to obtain and maintain a valid registration certificate;
- (c) Failure to continually maintain the appropriate bond and security behind the bond;
- (d) Failing to comply with ORS 658.405 to 658.485;
- (e) Failing to comply with building codes or health and safety laws to the extent that an authority responsible for the enforcement of such codes and laws has determined the farm-worker camp to be unfit for inhabitation;
- (f) Violating any provision of ORS 658.755(2); or
- (g) Failing to provide lodging as provided for in ORS 658.790.

(3) When an application is denied or an indorsement is revoked or when the commissioner refuses to issue or renew an indorsement the commissioner will not issue the applicant or indorsee an indorsement for a period of three years from the date of the denial, refusal to issue or renew or revocation of the indorsement.

(4) Notwithstanding section (3) of this rule, the commissioner, for good cause shown, may issue an indorsement to a farm-worker camp operator whose application has been previously denied or whose indorsement was not issued, renewed or was revoked before the expiration of three years, provided:

- (a) The applicant or indorsee submits a petition explaining each and every reason why the applicant or indorsee should receive an indorsement; and
- (b) The applicant or indorsee files a completed application with the petition and pays the appropriate fees.

(5) As used in section (4) of this rule, "good cause" means an excusable mistake or a circumstance beyond a person's control.

(6) The commissioner shall grant or deny the petition referred to in section (5) of this rule, and in so doing shall consider the following factors:

- (a) The magnitude and seriousness of the violation or violations which led to the denial, refusal to issue or renew or revocation of the indorsement;
- (b) The petitioner's past history in taking all necessary measures to prevent or correct violations of statutes or rules;
- (c) The petitioner's other prior violations of the statute or rules, if any;
- (d) Other matters which indicate to the commissioner that the petitioner is not likely to violate ORS 658.705 to 658.850 and these rules in the future.

(7) Nothing in this rule shall preclude the commissioner from imposing a civil penalty in lieu of denying or refusing to issue or renew an application or in lieu of suspension or revocation of an indorsement.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

## Emergency Suspension of License Indorsement

### 839-014-0500

#### **Immediate Suspension or Refusal to Renew a License Indorsement; Notice of Opportunity for Hearing; Service**

(1) If the bureau finds there is a serious danger to the public health or safety, it may immediately suspend or it may refuse to renew a license indorsement. For purposes of this rule, such a decision is referred to as an emergency suspension order. An emergency suspension order is a written order which is not a final order under ORS Chapter 183. An emergency suspension order is not an order in a contested case and may be issued without notice or an opportunity for a hearing as required for contested cases under ORS Chapter 183.

(2)(a) Except where the danger to the public health or safety is so imminent that opportunity for the licensee to object under section (3) of this rule is not practicable as determined by the bureau, the bureau shall provide the licensee with notice and opportunity to object prior to issuing the emergency suspension order. For purposes of this rule, this notice is referred to as a pre-suspension notice;

(b) The pre-suspension notice shall:

(A) Specify the acts of the licensee and the evidence available to the bureau which would be grounds for revocation, suspension or refusal to renew the license under the bureau's usual procedures;

(B) Specify the reasons why the acts of the licensee seriously endanger the public's health or safety;

(C) Identify a person in the bureau authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

(c) The bureau may provide the pre-suspension notice to the licensee in writing, orally by telephone or in person, or by any other means available to the bureau;

(d) Where the pre-suspension notice is given orally, the bureau subsequently shall provide the licensee with a written copy of the notice.

(3) Following the pre-suspension notice, the bureau shall provide the licensee an immediate opportunity to object to the bureau's specifications provided in the pre-suspension notice before a person authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

(4)(a) When the bureau issues the emergency suspension order, the bureau shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) Those required under ORS 183.415(2) and (3);

(B) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order;

(C) That if the demand is not received by the bureau within 90 days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing under ORS Chapter 183;

(D) The effective date of the emergency suspension order;

(E) The specifications noted in subsection (2)(b) of this rule;

(F) That with the agreement of the licensee and the bureau the hearing opportunity on the emergency suspension order may be combined with any other bureau proceeding affecting the license. The procedures for a combined proceeding shall be those applicable to the other proceeding affecting the license.

(5)(a) If timely requested by the licensee pursuant to subsection (4)(b) of this rule, the bureau shall hold a hearing on the emergency suspension order as soon as practicable;

(b) At the hearing, the bureau shall consider the facts and circumstances including, but not limited to:

(A) Whether at the time of issuance of the order there was probable cause to believe from the evidence available to the bureau that there were grounds for revocation, suspension or refusal to renew the license under the bureau's usual procedure;

(B) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety;

(C) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order;

(D) Whether the bureau followed the appropriate procedures in issuing the emergency suspension order.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.705 - 658.850

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

## **Access to Telephone in Farm-Worker Camp**

### **839-014-0600**

#### **Definitions**

As used in ORS 659.285(3) and in OAR 839-014-0600 to 839-014-0630, unless the context requires otherwise:

(1) "Emergency" means circumstances in which the life, health, safety or property of a person, or of a member of a person's immediate family, is threatened with imminent harm, and shall include any instance in which a reasonable person would seek the immediate assistance of medical, law enforcement or emergency personnel.

(2) "Farm-worker camp operator" means any person who operates a farm-worker camp, notwithstanding the provisions of OAR 839-014-0035(8).

(3) "Operating telephone" means a telephone for the purpose of communicating with persons outside the farm-worker camp and over which information may be given and received at the time it is intended to be given or received.

(4) "Owned or controlled" includes sufficient ownership or control to affect the terms and conditions of occupancy of the housing.

(5) "Pay telephone" means a telephone which is operated by use of coins or credit card. "Pay telephone" does not include a telephone normally used by the employer for the employer's private use.

(6) "Reasonable access" means access to a telephone at any time the employee indicates that an emergency exists and



that a telephone is needed to communicate with any person for the purpose of dealing with the emergency. A reasonably accessible telephone must be located at the housing or within one tenth of one mile from the housing.

(7) "Reasonable opportunity for private use" means that workers are provided access to a telephone which can be used by them under circumstances in which their conversation cannot be overheard or monitored by the employer or by any other person, and at times of the day and week when they are not working, and during which they can conduct personal business. If the telephone is not located at the site of the housing, reasonable opportunity for private use includes posting at the housing in view of the workers, in the language used to communicate with the employees, a notice containing directions to the telephone and any conditions on use or availability of the telephone.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 659.280 - 659.295

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0610**

**Emergency Access to Telephone**

(1) When employees occupy farm-worker housing that is owned or controlled by the employer, the employer shall ensure that employees occupying the housing have reasonable access to an operating telephone at any time for emergency use. The telephone may be a pay telephone, at the discretion of the employer.

(2) Employers shall allow employees access to a telephone pursuant to the provisions of this rule, upon request of the employee.

Stat. Auth.: ORS Ch. 164, 165, 651, 658, 659.297(9) & 962

Stats. Implemented: ORS 659.285(3)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

**839-014-0620**

**Other Access to Telephone**

(1) When employees occupy housing that is owned or controlled by the employer, the employer shall ensure that employees occupying the housing have reasonable access to an operating telephone for the private use of the employees. The telephone must be located within a two mile radius of the farm worker housing as measured by the most direct route by road or foot path from the housing to the place where the telephone is located.

(2) When the telephone designated by the employer for personal use of the employees is located in the employer's residence or place of business, the employer may establish reasonable rules for the private use of the telephone by the employees. If the employer establishes such rules, the employer shall post a copy of the rules in a conspicuous place where all occupants can easily view them. The rules established by the employer shall be in English and in the language used by the employer to communicate with the employees.

(3) If a dispute arises regarding the terms of access established by the employer, the or the court if a private action has been filed, shall determine whether the terms of access to the telephone are reasonable.

(4) In making a determination, the commissioner will consider:

- (a) Any circumstances presented by the employer in support of the employer's position;
- (b) Any circumstances presented by the employee in support of the employee's position;
- (c) The number of employees occupying the housing;
- (d) The location of the housing;
- (e) Any other relevant information.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 659.280 - 659.295

Hist.: BL 2-1990, f. & cert. ef. 3-1-90; BL 1-1996, f. & cert. ef. 1-9-96

**839-014-0630**

**Waiver from Telephone Requirement**

- (1) An employer may request a waiver from the requirements of ORS 659.285(3) and these rules. Prior to the granting of any request for waiver the employer must demonstrate to the Commissioner that:
- (a) Compliance with the statute and rules would constitute an unreasonable hardship for the employer; and
  - (b) The employer meets any and all requirements of the Division for an emergency medical plan.
- (2) Persons desiring a waiver, may apply to the Commissioner on a form prepared by the Bureau. The completed waiver application form shall be submitted to the Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, N.E., Bldg. E-1, Salem, OR 97310.
- (3) Persons desiring to obtain a waiver must submit, with the application, a copy of the emergency medical plan, which meets the requirements of the rules of the Division.
- (4) In determining what circumstances constitute an unreasonable hardship the Commissioner shall consider the following:
- (a) Any circumstances presented by the employer in support of the application;
  - (b) The number of employees occupying the housing;
  - (c) The location of the housing;
  - (d) The length of time the housing is intended to be occupied;
  - (e) Any other relevant information.
- (5) In considering the request for the waiver the Commissioner shall consider:
- (a) The history of the employer in complying with the emergency medical plan;
  - (b) Any other relevant information.
- (6) The Commissioner may grant the waiver request when the Commissioner determines that the provisions of section (1) of this rule are met. The Commissioner may specify any conditions on approval of the request. If the request is

denied, the Commissioner shall state each reason for the denial.

Stat. Auth.: ORS Ch. 164, 165, 651, 658, 659.285(3) & 962

Stats. Implemented: ORS 659.285(3)

Hist.: BL 2-1990, f. & cert. ef. 3-1-90

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 15**

**FARM AND FOREST LABOR CONTRACTORS**

**839-015-0000**

**Notice of Proposed Rule**

Prior to adoption, amendment or repeal of any rule relating to farm and forest labor contractors, the Bureau of Labor and Industries shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) By mailing a copy of the notice of intended action to persons on the Wage and Hour Division's mailing list for farm and forest labor contractors established pursuant to ORS 183.335(7).
- (3) By mailing a copy of the notice of intended action to:
  - (a) The Associated Press;
  - (b) Associated Oregon Industries;
  - (c) Oregon Farm Bureau Federation;
  - (d) Oregon Health Division;
  - (e) Oregon Legal Services Corporation, Farmworker Program;
  - (f) Oregon Occupational Safety and Health Division;
  - (g) Northwest Reforestation Contractors Association;
  - (h) Hood River Grower-Shipper Association;
  - (i) Other associations and governmental entities as appropriate.

Stat. Auth.: ORS Ch. 183, 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 10-1980, f. & ef. 9-19-80; BL 6-1984, f. & ef. 4-27-84, Renumbered from 839-015-0103; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0002**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective September 9, 1995, are hereby adopted by reference as permanent rules for farm and forest labor contractors matters except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of ORS 658.405 to 658.465. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183, 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 152, f. 1-2-74, ef. 1-25-74, BL 12-1980, f. & ef. 10-16-80; BL 6-1984, f. & ef. 4-27-84, Renumbered from 839-015-0102; BL 9-1986, f. & ef. 9-2-86; BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0004**

**Definitions**

As used in these rules, unless the context requires otherwise:

- (1) "Bureau" means the Bureau of Labor and Industries.
- (2) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.
- (3) "Farm labor contractor" means:
  - (a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the production or harvesting of farm products;
  - (b) Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the production or harvesting of farm products;
  - (c) Any person who recruits, solicits, supplies or employs workers to gather wild forest products, as that term is defined in paragraph (22) of this section;
  - (d) Any person who furnishes board or lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the production or harvesting of farm products or in the gathering of wild forest products;
  - (e) Any person who bids or submits contract offers for the production or harvesting of farm products or the gathering of wild forest products; or
  - (f) Any person who subcontracts with another for the production or harvesting of farm products or the gathering of wild forest products.

(4) "Forest labor contractor" means:

(a) Any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another in the forestation or reforestation of lands; or

(b) Any person who recruits, solicits, supplies or employs workers for an employer who is engaged in the forestation or reforestation of lands; or

(c) Any person who furnishes board and lodging for workers in connection with the recruiting, soliciting, supplying or employing of workers to be engaged in the forestation or reforestation of lands;

(d) Any person who bids or submits contract offers for the forestation or reforestation of lands; or

(e) Any person who subcontracts with another for the forestation or reforestation of lands.

(5) "Farm-worker camp" has the same meaning as that defined in ORS 658.705(7).

(6) "Farm-worker camp operator" has the same meaning as that defined in OAR 839-014-0035(8).

(7) "Production and harvesting of farm products" includes, but is not limited to, the cultivation and tillage of the soil, the production, cultivation, growing and harvesting of any agricultural commodity, including, but not limited to, cottonwood trees for fiber production and Christmas trees, and the preparation for and delivery to market of any such commodity.

(8) "Forestation or reforestation of lands" includes, but is not limited to:

(a) The planting, transplanting, tubing, pre-commercial thinning, and thinning of trees and seedlings; and

(b) The clearing, piling and disposal of brush and slash; and

(c) Other activities related to the forestation or reforestation of lands including, but not limited to, tree shading, pinning, tagging or staking; fire trail construction and maintenance; slash burning and mop up; mulching of tree seedlings; forest fire suppression by contract crew; application of big game repellent by contract crew; herbicide or pesticide application in the forest by contract crew; gopher baiting; gopher trapping and any activity related to the growth of trees and tree seedlings and the disposal of debris from the land.

(9) "Platoon leader" means a temporary supervisor employed by the farmer to supervise employees hired independently by the farmer and placed under the direction of the platoon leader, provided there is no other connection between the platoon leader and the employees.

(10)(a) "Crew leader" means the member of a group of workers who acts as a spokesperson for the group, travels with the group from another state into Oregon, performs the same work along with other members of the group and receives no extra compensation from any person by virtue of acting as a crew leader, aside from any money received from other members of the group for sharing payment of the actual expenses of the group, and provided that the employer pays the members of the group directly and individually for their labor. A crew leader may perform the following activities without a license:

(A) Transporting workers from their local place of residence to their place of employment when the crew leader does not perform this service for a profit;

(B) Making arrangements for jobs, housing, credit, or any other needs of the members of the group, provided the crew leader receives no compensation for this service;

(C) Adding members to the group in Oregon, provided the crew leader receives no compensation therefore from the added members or from any other person.

(b) An immediate family acting as a single unit is not a group, within the meaning of this rule. The spokesperson for such unit is not, therefore, a crew leader. An immediate family includes the father, mother, son, daughter, brother, sister, husband, or wife of the spokesperson for the family.

(11) "Individuals engaged in the solicitation or recruitment of persons for day-haul work" means individuals who solicit or recruit only persons:

(a) Who reside permanently in the local area; and

(b) Who do not, temporarily or otherwise, reside on the farm on which they are working; and

(c) Who are not employed by the individuals; and

(d) Who are transported to the farm each day.

(12) "Agreed remuneration" means compensation of any kind which is agreed upon by a farm or forest labor contractor and another for the services of such contractor.

(13) "Perform labor" means the performance of work which is manual or physical in nature (including the use of tools), as distinguished from mental, technical, professional or managerial. Work of a mental, technical, professional or managerial nature includes, but is not limited to:

(a) The operation of aircraft, trucks or heavy equipment that require special permits to operate or labor performed by support crews in connection with such operation;

(b) Stocking surveys;

(c) Timber cruising;

(d) Plantation and timber stand examination;

(e) Surveying;

(f) Secretarial work;

(g) Supervising employees;

(h) Technical or professional work which requires an occupational license (other than the license required by ORS 658.405 to 658.475);

(i) Work requiring an advanced type of knowledge in a field of science, technology or learning customarily acquired over a prolonged course of specialized instruction and study;

(j) Forest research and genetic improvement work (including single-tree or sample lot cone collections and the planting of parent or study trees) that services technical forestry advancement rather than direct forestation or reforestation efforts.

(14) "Worker" means an individual performing labor in the forestation or reforestation of lands, in the gathering of wild forest products or in the production and harvesting of farm products, or any person who is recruited, solicited, supplied or employed to perform such labor, notwithstanding whether or not a contract of employment is formed or the labor is actually performed. A "worker" includes, but is not limited to employees and members of a cooperative corporation.

(15) "Person" means any individual, sole proprietorship, partnership, corporation, cooperative corporation, association, public or private corporation, government or governmental instrumentality or other business or legal entity.

(16) "Farmer" means the owner or lessee of land used in the production and harvesting of farm products.

(17) "License" means a farm or forest labor contractor's license issued by the Bureau.

(18) "Permanent employee" means an employee of a farmer, nursery owner, processor of farm products, or owner or lessee of land intended to be used for the production of timber whose employment is intended to continue indefinitely. Employees employed on a seasonal, temporary or transient basis are not permanent employees under the section.

(19) "To induce to travel" means to cause or entice a worker to travel to a specific geographical location or area, by any promise or inducement.

(20) "Aggregate bond or deposit" means a bond or deposit posted pursuant to ORS 658.415 by a licensed business entity on behalf of itself and any of its owners or employees who engage in farm or forest labor contracting activities to secure payment of wages and advances due from the entity or any of its owners or employees arising from their activities as farm or forest labor contractors, whether incurred on behalf of the entity or any of its owners or employees.

(21) "To gather wild forest products" or "the gathering of wild forest products" means the gathering of evergreen boughs, yew bark, bear grass, salal or ferns, and nothing else, from public lands for sale or market prior to processing or manufacture. This term does not include the gathering of these products from private lands in any circumstance or from public lands when the person gathering the products, or the person's employer, does not sell the products in an unmanufactured or unprocessed state.

Example: A nursery uses its own employees to gather evergreen boughs which it uses in the manufacture of Christmas wreaths. The nursery is not engaged in farm labor contracting activity and therefore would not be required to obtain a license.

Example: A person contracts with the owner of private land to remove salal from the land for resale to florists. Because the salal is growing on private land, the person is not engaged in "gathering of wild forest products" as that term is used in these rules (although in some circumstances, the person may be harvesting a farm product).

(22) "Forest fire suppression by contract crew" includes work performed by forest fire fighters who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of forest fire fighters prior to the existence of the fire. (An incidental duty to assist in emergency fire suppression arising from a permit, timber sale contract, or similar agreement whose primary purpose does not relate to fire suppression does not constitute such a prior contract to supply forest fire fighters.)

(23) "Application of big game repellent by contract crew" means work performed by workers who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of workers to apply big game repellent.

(24) "Herbicide or pesticide application in the forest by contract crew" means work performed by workers who are recruited, solicited, supplied or employed by a person who has contracted to supply a crew of workers to apply herbicides or pesticides in the forest.

(25) As used in subsections (22), (23) and (24) of this rule, the term "work performed" has the same meaning as the term "perform labor" in subsection (13) of this rule.

Stat. Auth.: ORS 658.407

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96

## Licensing



**839-015-0125****Contractors Must Obtain a License; Indorsement**

No person may perform the activities of a farm or forest labor contractor without first obtaining a temporary permit or license issued by the bureau. No person may perform the activities of a forest labor contractor or operate a farm-worker camp without first obtaining a special indorsement from the bureau authorizing such performance. Unless otherwise specifically exempt, and except for cooperative corporations, no person may perform the duties of a farm or forest labor contractor or operate a farm-worker camp under a license issued to a corporation unless the person is also licensed to perform such duties.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0130****Exemptions From Licensing**

The following persons are not required to obtain a farm or forest labor contractor's license:

- (1) A farmer or owner or lessee of land intended to be used for the production of timber dealing with workers or worker groups only concerning employment in their own operation.
- (2) A nursery owner or operator dealing with workers or worker groups only concerning employment in their own operations.
- (3) A processor of farm products dealing with workers or worker groups only concerning employment in their own farm operations.
- (4) A permanent employee of a farmer, nursery owner, or processor of farm products, or a permanent employee of an owner or lessee of land intended to be used for the production of timber so long as the employee is engaged solely in activities which would not require the employer to be licensed if the employer were performing the activity.
- (5) A person engaged only in the solicitation or recruitment of workers for agricultural day-haul work and not engaged in arranging for board or lodging for migrant workers and not performing as an employer of the workers.
- (6) A platoon leader.
- (7) A leader, or a leader's agent, of an organization operating as a labor union, provided that the only payment received from the workers is in the form of membership dues for which the workers are accorded membership status in the conduct of the affairs of the organization.
- (8) An employee of a farm or forest labor contractor except for any employee who:
  - (a) Recruits, solicits, supplies or employs workers on behalf of the farm or forest labor contractor; or
  - (b) For an agreed remuneration or rate of pay recruits, solicits, supplies or employs workers to perform labor for any other person in forestation or reforestation of lands or the production or harvesting of farm products; or

- (c) Recruits, solicits, supplies or employs workers to gather wild forest products; or
  - (d) Furnishes board or lodging for such workers (but cooks employed by the contractor are not required to be licensed by reason of this sole activity); or
  - (e) On his or her own behalf bids or submits prices on contracts offers for those activities or enters into a subcontract with another for any of those activities.
- (9) A crew leader provided that if the crew leader engages in any activity or receives any compensation with respect to any worker which exceed the permitted activities or compensation allowed by the definition in OAR 839-015-0004(9) (a), the crew leader is not exempt with respect to any activities or workers.
- (10) A person who is primarily a supplier of on-farm equipment (sheep shearer, potato digger, or other farm machinery) or cottonwood tree harvesting machines unless the person also supplies temporary workers other than workers engaged in driving or maintaining the equipment.
- (11) The advertising media.
- (12) Employees of the Employment Department who are acting within the scope of their employment.
- (13) A person performing work of a mental, technical, professional or managerial nature as defined in 839-015-0004(13).
- (14) An individual who performs work, other than recruiting, soliciting, supplying or employing workers to perform labor for another, or recruiting, soliciting, supplying or employing workers to gather wild forest products, alone or with only the assistance of the individuals named in section (15) of this rule.
- (15) The spouse, son, daughter, brother, sister, mother or father of the individuals named in sections (14) and (16) of this rule.
- (16) Individuals who perform labor in connection with an agreement for the exchange of labor or services with each other, provided that the work is performed on land owned or leased by the individuals, and provided further that the labor or services involved are performed solely by said individuals, their immediate families as specified in section (16) of this rule, or their permanent employees.
- (17) An educational institution which is recognized as such by the Oregon Department of Education.
- (18) An individual who collects tree seed cones or an individual who buys tree seed cones from other individuals. This section applies to individuals only and not to persons who are otherwise defined as farm or forest labor contractors.
- (19) Persons who recruit, solicit, supply or employ workers to perform labor under a contract or agreement solely for the following activities, provided that the person performs no other activities which would require licensing:
- (a) Stream or creek debris removal;
  - (b) Provision of security services;
  - (c) Any activity which does not have the primary purpose of forestation or reforestation of lands, the gathering of wild forest products or of production or harvesting of farm products.
- (20) Persons engaged in logging operations who would only otherwise be farm or forest labor contractors because they engage in reforestation activities which are incidental to contracts whose primary purpose is the sale of timber, provided that they perform such incidental reforestation work using their own employees. If the incidental reforestation activities are carried out using a subcontractor, the subcontractor is required to be licensed.

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96

**839-015-0135**

**Issuance of License**

- (1) A license may be issued only as follows:
- (a) To an individual proposing to operate as a sole proprietor under the individual's own name or under the individual's own name and an assumed business name registered with the Corporation Division;
  - (b) To an individual proposing to operate as a partner in a partnership under the individual's own name or under the individuals' own names and the assumed partnership business name registered with the Corporation Division;
  - (c) To the majority shareholder or majority shareholders of a corporation that is authorized to do business in Oregon by the Office of the Secretary of State and to the corporation. Under this form of licensing, the licensed majority shareholder or majority shareholders and the licensed corporation are individually and jointly responsible for all actions of the corporation and its agents when acting as a farm labor contractor;
  - (d) To a cooperative corporation authorized by the Office of Secretary of State to do business in this state;
  - (e) To an employee of a forest or farm labor contractor who is proposing to or is carrying out activities which would require the employee to obtain a license as a farm or forest labor contractor.
- (2) No license may be issued to an individual proposing to do business as a partner in a partnership unless all of the proposed partners are licensed.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0140**

**Licensing Requirements**

To be eligible for a license, an applicant therefore must:

- (1) Be of good character, competence and reliability.
- (2) Be a person who has not, within the preceding three years, had an Oregon farm and forest labor contractor's license application denied.
- (3) Be a person who has not, within the preceding three years, in Oregon or in any other jurisdiction, had a farm or forest labor contractor's license or indorsement denied, revoked or suspended.
- (4) Not have persons financially interested in any capacity in the applicant's business as a farm or forest labor contractor who were denied an Oregon farm or forest labor contractor's license within the preceding three years or who had such

license denied, revoked, or suspended within the preceding three years in Oregon or any other jurisdiction. A refusal to renew a license or grant a temporary permit because the applicant or any person financially interested in the applicant's business as a farm or forest labor contractor has been denied a license or had a license revoked in Oregon or any other jurisdiction within the preceding three years is considered the same as the revocation of the license or permit on the date of its expiration.

- (5) Not have any unsatisfied final judgments of the court or final orders issued by any government agency which require the payment of unpaid wages to employees or the payment of any advances made to the contractor by farmers or owners or lessees of land intended to be used for the production of timber.
- (6) Pay the appropriate license fee.
- (7) Except as provided in OAR 839-015-0141(2), show proof of financial ability to promptly pay the wages of employees and advances made by farmers or owners or lessees of land intended for the production of timber in the form of a corporate surety bond or deposit with the commissioner.
- (8) File a completed application form.
- (9) Except as provided in OAR 839-015-0141(2), certify on the application that there is insurance on vehicles used to transport workers in an amount sufficient to comply with the Oregon Financial Responsibility Law (ORS 486.011 to 486.680).
- (10) Except as provided in OAR 839-015-0141(2), in the case of forest labor contractor license applicants, show proof that worker's compensation insurance will be provided on each individual as required in ORS 658.417(4).
- (11) In the case of a corporation, be authorized to do business in Oregon.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0141**

**Licensing requirements for Employees of Contractor/Indorsements**

- (1) The employee of a farm or forest labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a farm or forest labor contractor subject to an employee indorsement if the employee continuously meets all of the following conditions:
  - (a) The employee's employer has filed with the Commissioner of the Bureau of Labor and Industries a signed statement, in a form required by the commissioner, agreeing to sponsor the application and to notify the commissioner promptly upon termination of the employment of the employee;
  - (b) The employee engages in activities that would require licensing as a farm or forest labor contractor solely on behalf of the employer;
  - (c) The employee does not personally employ any workers and is not responsible for paying any workers;
  - (d) The employer maintains proof of financial responsibility pursuant to ORS 658.415(3);
  - (e) The employer's license remains in good standing; and

- (f) The employee meets all of the conditions for licensing as a farm or forest labor contractor provided for in OAR 839-015-0140.
- (2) A farm or forest labor contractor subject to an employee indorsement acting in compliance with section (1) of this rule need not comply with OAR 839-015-0140(7), (9) and (10) insofar as the employer has complied with these provisions.
- (3) The license of a farm or forest labor contractor subject to the employee indorsement shall state on its face the conditions contained in this rule and shall state further that the bearer of the license is licensed to act only as conditioned by this rule.
- (4) The license of a farm or forest labor contractor subject to an employee indorsement shall terminate immediately upon the termination of the employment relationship with the employer who sponsored the employee's application. The employee shall submit the license to the bureau forthwith.
- (5) A license subject to an employee indorsement may be terminated either by the employee or by the sponsoring employer by notifying the bureau in writing that either wishes to terminate the license or that the conditions specified in section (1) of this rule are no longer met.
- (6) The license subject to an employee indorsement terminates upon receipt by the bureau of notice referred to in section (5). The employer's joint and several liability for actions taken by the employee under color of the employee's license pursuant to Ch. 73, Sec. 3(6), 1995 Oregon Laws, extends to any actions taken by the employee before the original license is surrendered to the bureau.

Stat. Auth.: OR Laws Ch. 73, Sec 3, 1995

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0142**

**Use of Certain Agents Prohibited/Evidence of Sham or Subterfuge**

- (1) The Bureau may refuse to license or renew the license of any person who proposes to use any individual, partnership, association, corporation or other entity as such person's agent for the performance of any activity specified in ORS 658.405(1), when the proposed agent has, within the preceding three years, violated any section of ORS 658.405 to 658.485.
- (2) The Bureau will regard as prima facie evidence of sham or subterfuge mere changes in business form subsequent to denial, suspension, revocation or refusal to renew a license, where a relative by blood or marriage, or a person presently employed in an occupation, other than an occupation with a licensed farm or forest labor contractor, makes application, including a renewal application, for a license and one or more of the following factors are present:
  - (a) A lack of adequate consideration or value given for the former business or its property;
  - (b) The use of the same real property, fixtures or equipment or use of a similar business name of the former business;
  - (c) The time period elapsed between the Bureau's denial, suspension, revocation or refusal to renew a license and application by the new business for a license is less than one year;
  - (d) A person financially interested in any capacity in the former business has a financial interest in any capacity in the new business;

- (e) The amount of capitalization is inadequate to meet current obligations of the new business; or
  - (f) The formalities of a partnership or a corporation are disregarded by the new business when such business is a partnership or corporation.
- (3) When the factors outlined in section (2) of this rule are present, it shall be the burden of the applicant to provide evidence to the Bureau clearly indicating that such business form is not sham or subterfuge.

Stat. Auth.: ORS Ch. 651 & 658.415(14)

Stats. Implemented: ORS 658.425(3) & 658.440(3)(a)

Hist.: BL 16-1988, f. & cert. ef. 12-13-88

## 839-015-0145

### Character, Competence and Reliability

The character, competence and reliability contemplated by ORS 658.405 to 658.475 and these rules not limited to, consideration of:

- (1) A per include, but person's record of conduct in relations with workers, farmers and others with whom the person conducts business.
- (2) A person's reliability in adhering to the terms and conditions of any contract or agreement between the person and those with whom the person conducts business.
- (3) A person's timeliness in paying all debts owed, including advances and wages.
- (4) Whether a person has unsatisfied judgments or felony convictions.
- (5) Whether a person has been refused a bond.
- (6) Whether a person has provided workers' compensation coverage for each worker or paid worker's compensation insurance premium payments when due.
- (7) Whether a person has violated any provision of ORS 658.405 to 658.503 or these rules.
- (8) Whether a person has employed an agent who has had a farm or forest labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated any provisions of ORS 658.405 to 658.503 or these rules.
- (9) Whether a person has notified the Bureau of any change in the circumstances under which a license was issued.
- (10) Whether a person has failed to comply with federal, state or local laws or ordinances relating to the payment of wages, income taxes, social security taxes, unemployment compensation tax, or any tax, fee or assessment of any sort.
- (11) Whether a person, when required by law, has failed or refused to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required for the safety and health of workers.
- (12) Whether a person has repeatedly failed to file or furnish all forms and other information required by ORS 658.405 to 658.503 and these rules.
- (13) Whether a person has made a willful misrepresentation, false statement or concealment in the application for a license.

(14) Whether a person has willfully made or caused to be made to any person any false, fraudulent or misleading representation, or publish or circulate any false, fraudulent or misleading information concerning the terms, conditions, or existence of employment at any place or by any person.

(15) Whether a person failed to maintain the bond or cash deposit as required by ORS 658.405 to 658.503.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented ORS 659.405 to 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0150**

**Procedure for Obtaining a Temporary Permit**

(1) A Farm or Forest Labor Contractor may obtain a temporary permit by filing an application with any office of the Bureau (except Coos Bay). Forms for this purpose may be obtained from the office in which the application is filed.

(2) Temporary permits may be issued only under the following conditions:

- (a) The application is complete on its face;
- (b) Satisfactory evidence of insurance is certified to on the application;
- (c) The applicant or any person financially interested in any manner in the applicant's operations as a Farm or Forest Labor Contractor has not had an application denied or license revoked or suspended within the preceding three years. A refusal to renew a license or grant a temporary permit because the applicant therefore or any person financially interested in the applicant's business as a Farm or Forest Labor Contractor has been denied a license or had a license revoked in Oregon or any other jurisdiction within the preceding three years, is considered the same as the revocation of the license or permit on the date of its expiration;
- (d) Proof of financial ability to pay employees wages and advances from farmers or owners or lessees of land intended to be used for the production of timber is submitted with the application and is complete on its face;
- (e) The appropriate fee is paid at the time the application is submitted.

(3) A temporary permit is valid for not more than 60 days. The permit immediately expires if the license application is rejected or a license issued.

(4) The farm-forest labor contractor examination must be scheduled and taken within 30 days of issuing of the temporary permit. Failure to take the examination may result in denial of the license application.

(5) Only one temporary permit shall be issued in a 12 month consecutive period.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.407(3) & 962

Stats. Implemented: ORS 658.425(1-3)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90

**839-015-0155**

## **Procedure for Obtaining a License**

A license may be applied for as follows:

- (1) File a completed application on forms supplied by the Bureau. In the case of a partnership, each partner must complete and file a separate application form.
- (2) A farm or forest labor contractor may apply for a license on behalf of an employee, providing that all of the requirements of OAR 839-015-0141 are met.
- (3) Pay the appropriate fees at the time the application is filed. Where the applicant is engaged in the production or harvesting of farm products, a \$20 fee is required. Where the applicant is engaged in the forestation or reforestation of lands (or engaged in both the forestation and reforestation of lands and the production or harvesting of farm products), a \$100 fee is required. In the case of a partnership, each partner must pay the appropriate fee.
- (4) File with the application proof of financial ability to pay wages and advances in the amount required by OAR 839-015-0210 on forms supplied by the bureau. Except as provided in OAR 839-015-0157, in the case of a partnership, each partner must file such proof. Such proof may be a corporate surety bond, a cash deposit or a deposit the equivalent of cash.
- (5) File any assumed business name and corporate name with the Corporation Division and submit proof of such filing with the application.
- (6) If a corporation, show proof of being authorized to do business in Oregon.
- (7) All forms, documents and other required information shall be filed with Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 N.E. Oregon, #32, Portland, OR 97232.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96

## **839-015-0157**

### **Procedure for Obtaining Reduction in the Amount of Required Aggregate Bonding When More Than One Individual is Required to be Licensed in One Entity**

- (1) Farm or forest labor contractors desiring to apply for a reduction in the required bond or deposit may do so by submitting an application to the Bureau of Labor and Industries.
- (2) Applications shall be in writing and on forms provided by the bureau. All completed applications must be mailed or delivered to the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 N.E. Oregon, #32, Portland, OR 97232.
- (3) No such application shall be considered unless the commissioner determines that:
  - (a) The application pertains to a single business entity; and
  - (b) More than one natural person is an owner or employee of the business entity; and
  - (c) Such persons engage in activities requiring a farm labor contractor's license; and



(d) Such persons engage in such activities solely for the business entity.

(4) In the case of a corporate surety bond, applications must be accompanied by a statement from the licensee's bonding agent or agents certifying the length of time the licensee has been bonded by the agent and that there have been no valid claims against the licensee's bond during that time. If the license utilized more than one bonding agent, a statement is required from each agent.

(5) No application may be granted unless the business entity has operated for at least one year without a valid claim in this or any other state against the bond or deposit.

(6) When the commissioner is satisfied that the business entity has presented adequate proof that it has operated for at least one year without a valid claim against its bond or deposit, and when the commissioner determines that the conditions set out in sections (3) and (5) of this rule are met, the commissioner may grant an application for a reduction in the aggregate amount of the required bond or deposit.

(7) In determining whether to grant the application, the commissioner shall consider the following circumstances:

(a) All matters contained in the application;

(b) The number of licensees;

(c) The type of business entity;

(d) The history of each licensee in complying with any law;

(e) Whether the licensees are dealing directly or indirectly with employees;

(f) The number of employees employed by the business entity;

(g) The character, competence or reliability of the licensees, as those terms are used in these rules;

(h) Other information bearing on the circumstances of the application.

(8) When the commissioner determines to grant an application for lower aggregate bonding requirements for a business entity and its owners pursuant to sections (5) and (6) of this rule, the application will be granted to permit a total aggregate bond or deposit in the amount required by OAR 839-015-0210 for one licensee with a corresponding number of employees:

(9) When the commissioner grants an application for lower aggregate bonding requirements for a business entity and its owners, the required amount of aggregate bond or deposit may be divided among the licensees as they may agree, so long as each is obligated; in the absence of an agreement, the required amount shall be divided equally among them.

(10) Notwithstanding section (8) of this rule, when the commissioner determines to grant an application for lower aggregate bonding requirements for a business entity and its owners pursuant to section (6) of this rule, the entity must post an aggregate bond or deposit in the minimum amount specified in ORS 658.415 or 658.735, whichever is greater.

(11) The commissioner may specify conditions, if any, on the approval of the application.

(12) If the commissioner rejects the application, the reasons for the rejection will be specified.

(13) The commissioner may, for good cause shown, revoke the licensee's authorization to post a reduced bond or deposit. "Good cause" includes but is not limited to the following situations:

(a) A valid claim is filed against the bond or deposit of the business entity or licensee who is an owner or employee;

(b) The business entity ceases operating the business for which the bond or deposit was accepted;

- (c) Failure to pay wages to the employees when due;
- (d) Failure to pay advances made to or on behalf of the licensee by growers or producers of agricultural products or by owners or lessee's of land intended to be used for the production of timber;
- (e) The business entity, its licensees, its agents or employees during the course of their employment, cause damage to any person by reason of willful misrepresentation, fraud, deceit or other unlawful act or omission;
- (f) The business entity, including any licensee, agent or employee, acting in the course of employment, has engaged in forest or farm labor contracting activities on behalf of anyone other than the business entity.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0160**

**Procedure for Obtaining a Duplicate License**

In the event a license is lost or stolen, the licensee shall submit a written request for a duplicate license. The licensee shall state the reasons for the request and the circumstances of the loss or theft. The new license will indicate the word "DUPLICATE" on the license above the number. The written request shall be made to the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0165**

**Procedure for Issuing or Renewing License**

- (1) Each license shall be issued on the date all application requirements are met. Except as provided in section (2) of this rule, licenses are valid for one year.
- (2) The expiration date of the license will be one year later, on the last day of the month in which the license was issued.
- (3) Applications for renewal shall be made 30 days prior to the expiration date by filing a renewal application, paying the appropriate fees, and filing proof of financial ability to pay wages and certain advances.
- (4) Each renewal application shall be accompanied by the work agreement between the contractor and the workers which is required by OAR 839-015-0360. The completed renewal application, renewal fee, and other information required in section (2) of this rule must be post-marked or received by the Licensing Unit at least 30 days prior to the expiration date of the license.
- (5) Applications, fees and other forms and documents must be filed with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**Examinations**

**839-015-0170**

**Scope**

- (1) The License Unit shall provide written examinations as the Commissioner deems necessary.
- (2) The License Unit shall provide all materials required for the examinations except hand-held calculators that may be used by the applicant.
- (3) All examinations shall be "closed book".
- (4) A written examination shall not exceed three hours.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0175**

**Examination Requirements**

- (1) Applicants may schedule an appointment with staff or designated proctors throughout the state to take an examination after receipt or a letter or authorization from the License Unit.
- (2) Once an applicant is authorized for examination, the applicant has 30 days in which to schedule an appointment to take the examination. Applicants shall take the examination within 45 days from the date of authorization.
- (3) Applicants must submit a written request to reschedule an examination after the 45-day period referred to in section (2) of this rule or change the site of the examination.
- (4) Except for hand-held calculators and interpreters, no applicant may use any other aids or notes or receive help from another person during an examination. Violation of this rule shall result in the examination being invalidated and treated as failed.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0178**

**Grading of Examinations/Notice of Score**

- (1) The passing score for each examination shall be 75 percent.
- (2) The License Unit shall notify applicants by mail of their examination scores.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0180**

**Review of Examinations**

- (1) Applicants failing to pass an examination may schedule an appointment with the License Unit to review the examination at a site designated by the License Unit.
- (2) Requests to review failed examinations shall be scheduled within 30 days from notification of score.
- (3) Applicants shall show picture identification before examination review.
- (4) Applicants reviewing failed examinations shall not retain notes taken during the review.
- (5) Examinations may be reviewed only by the applicant and/or any person the applicant has authorized, in writing, to review such examinations.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0185**

**Re-Examination**

- (1) Applicants who fail an examination shall wait the following time periods before retaking the examination:
  - (a) First failure: 7 days;
  - (b) Second failure: 14 days;
  - (c) Third failure: 30 days;
  - (d) Any subsequent failures: 60 days.
- (2) Re-examination shall not be scheduled sooner than seven days after review of a failed examination.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.412 & 962

Stats. Implemented: ORS 658.412

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 6-1990(Temp), f. 4-18-90, cert. ef. 4-17-90; BL 9-1990, f. 5-25-90, cert. ef. 6-1-90

**839-015-0190**

**Substitution of Oregon Examination**

- (1) The Commissioner may recognize national or state examinations for licensing if taken and passed within the last 12 months.
- (2) Specific examinations that may be recognized in lieu of the Oregon examinations are: Farm Labor Contractor examination for the State of California.
- (3) Independent verification of the test results from the testing authority is required.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.412 & 962

Stats. Implemented: ORS 658.412

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

**839-015-0195**

**Alternative Methods of Examination**

- (1) An Applicant for whom English is a second language may bring an interpreter to the examination to translate the examination questions. An interpreter may not assist an applicant in answering any question, but may translate the answers.
- (2) Alternative methods of examination will be provided upon written request.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.412 & 962

Stats. Implemented: ORS 658.412

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

**Proof of Financial Ability to Pay Wages and Advances**

**839-015-0200**

**Proof Required/Forms to be Used**

- (1) Every applicant for a farm or forest labor contractor's license must, unless otherwise exempt, show proof of financial ability to promptly pay the wages of employees and any advances made to or on behalf of the contractor by farmers or owners or lessees of land intended to be used for the production of timber. Such proof must accompany the applicant's application and be on forms supplied by the bureau.
- (2) The proof of financial ability to promptly pay the wages and advances referred to in section (1) of this rule shall be a

properly executed corporate surety bond as evidenced by the completion of Form WH-157 or a deposit in cash or negotiable securities acceptable to the commissioner.

(3) The forms are available upon request from: Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 N.E. Oregon, #32, Portland, OR 97232.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96

## **839-015-0210**

### **Amount of Bond or Deposit to be Filed**

(1) The amount of the bond or deposit referred to in OAR 839-015-0157 and 839-015-0200 shall be based on the maximum number of employees employed at any one time during the license year. The bond or deposit shall be:

(a) \$10,000 if the contractor employs no more than 20 employees; or

(b) \$30,000, or such lesser sum as may be authorized by the commissioner pursuant to Oregon Laws, Ch. 73, Sec. 4 (1995) and OAR 839-015-0230. The bond and any financial instrument shall be in the principal sum of the amount required by this rule. The amount of the bond or deposit must be continually maintained as long as the contractor is required to be licensed under ORS 658.405 to 658.475.

(2) When a licensee or holder of a temporary permit employs more than the maximum number of employees covered by the bond or deposit in section (1)(a) of this rule, the licensee or permit holder shall immediately increase the amount of the bond or deposit to the amount required by section (1)(b) of this rule. The licensee or permit holder shall also immediately notify the License Unit of the Wage and Hour Division.

(3) When an applicant for a license has been required to satisfy a court-ordered judgment or a final order issued by a governmental agency, the commissioner or the commissioner's designee may require the applicant to provide a bond or deposit of up to three times the amount required by section (1) of this rule as a condition of licensure. In such case, the commissioner or commissioner's designee will determine the actual amount of the bond or deposit by considering the following factors:

(a) The amount of the judgment or order that was satisfied;

(b) The magnitude and seriousness of the violation or violations which lead to the judgment or order;

(c) The past history of the applicant in taking all necessary measures to prevent or correct violations of statutes or rules;

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

(e) Other matters which indicate to the commissioner or commissioner's designee that the applicant is not likely to violate ORS 658.415(3) in the future.

Stat. Auth.: ORS 658.407(3), 658.415(14) & 658.820

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0220**

**Deposit in Cash or Negotiable Securities**

As used in ORS 658.415(3) and in these rules "a deposit in cash or negotiable securities" means a single financial instrument which yields no less than the amount required pursuant to OAR 839-015-0210 in cash immediately upon demand. If the deposit is one which is subject to a penalty for early withdrawal, then the deposit must be in an amount sufficient to satisfy the penalty and still yield no less than the amount required under OAR 839-015-0210 in cash.

Stat. Auth.: ORS 658.407(3), 658.415(4) & 658.820

Stats. Implemented: ORS 658.415(3)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 11-1993(Temp), f. 10-29-93, cert. ef. 11-3-93; BL 1-1994, f. & cert. ef. 5-3-94

**839-015-0230**

**Procedure for Obtaining Reduction in the Amount of Bond or Deposit Required**

- (1) In addition to the application for aggregate bond reduction provided in OAR 839-015-0157, farm and forest labor contractors who have been licensed for at least two consecutive years may apply for a reduction in the bond or deposit required by ORS 658.415(3). Applications shall be in writing and on forms provided by the bureau. All completed applications should be mailed or delivered to the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.
- (2) Farm and forest labor contractors may apply for a reduction in the bond or deposit required at any time after the contractor has been licensed for no less than two consecutive years or at the time a farm or forest labor contractor license renewal application is made, pursuant to ORS 658.435(2).
- (3) The contractor must have prior approval from the Bureau of Labor and Industries before submitting a reduced bond or deposit.
- (4) No application for a reduction in the bond or deposit will be considered by the commissioner in the case of a farm or forest labor contractor license renewal application unless such completed application is received with a completed license renewal application at least 30 days prior to the expiration of the license.
- (5) Applicants for a reduction in the bond or deposit will be notified in writing of the commissioner's disposition of the application by the License Unit of the bureau within 15 days of receipt of a completed application for a reduction.
- (6) If application for a reduction in the bond or deposit is made less than 30 days prior to the expiration date of the farm labor contractor's license, the contractor must submit the bond or deposit required pursuant to ORS 658.415(3) without reduction along with the contractor's completed application for a bond or deposit reduction.
- (7) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an unreduced bond, an amended bond for the reduced amount approved will be accepted by the commissioner after approval of the reduced bond.
- (8) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an unreduced cash deposit, the commissioner will initiate a refund of the appropriate amount to the contractor within five working days after approval of the reduced deposit.

(9) If an application for a reduction in the bond or deposit is approved by the commissioner after the contractor has submitted an instrument the equivalent of cash, the contractor will be allowed to replace such instrument with an instrument in the approved lesser amount.

(10) No application for reduction in the required bond or deposit shall be approved unless the commissioner determines that:

(a) The applicant has operated as an Oregon licensed farm labor contractor without an employee indorsement for at least two years in compliance with ORS 658.405 to 658.503 and with any other laws pertaining to the conduct of farm labor contractors; and

(b) The applicant employs 21 or more employees; and

(c) No valid claims for unpaid wages have been made against the applicant during the qualifying period of time for a bond or deposit reduction.

(11) If the commissioner rejects the application, every reason for the rejection will be specified.

(12) The commissioner may, for good cause shown, revoke the licensee's authorization to post a reduced bond or deposit. "Good cause" includes, but is not limited to, the following situations:

(a) A valid claim is filed against the bond or deposit of the licensee;

(b) Failure to pay wages to employee when due;

(c) Failure to pay advances made to or on behalf of the licensee by growers or producers of agricultural products or by owners of lessees of land intended to be used for the production of timber;

(d) The licensee or its agents cause damage to any person by reason of willful misrepresentation, fraud, deceit or other unlawful act or omission;

(e) The licensee or its agents engage in farm or forest labor contracting activities on behalf of anyone other than the business entity.

(f) Actions of the licensee demonstrate the licensee's character, reliability or competence make the licensee unfit to act as a contractor pursuant to OAR 839-015-0520(3).

(13) If the commissioner determines that the criteria in section (2) have been met by the applicant, the commissioner may reduce the amount of the bond or deposit that would otherwise be required pursuant to ORS 658.415(3) to an amount determined by the commissioner, but not less than the following:

(a) If the commissioner finds that the contractor has so operated for a period of at least five years, \$20,000; or

(b) If the commissioner finds that the contractor has so operated for a period of at least four years, \$22,500; or

(c) If the commissioner finds that the contractor has so operated for at least three years, \$25,000; or

(d) If the commissioner finds that the contractor has so operated for at least two years; \$27,500.

(14) If the applicant provided one or more corporate surety bonds as proof of financial responsibility during any of the qualifying period of time for which application for reduction is being made, the applicant must submit with the application a statement from the licensee's bonding agent or agents certifying the length of time the licensee has been bonded by the agent and that there have been no valid claims filed against the licensee's bond(s) during the qualifying period of time covered by the application. If the licensee utilized more than one bonding agent, a statement is required from each agent for the period of time covered by the application.



Stat. Auth.: OR Laws Ch. 73, Sec. 4, 1995

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 2-1996, f. & cert. ef. 1-9-96

**License Protests**

**839-015-0250**

**Protesting the Issuance of a License**

Any individual may protest the issuance of a Farm or Forest Labor Contractor's license to any applicant for such license. The protest may be made at any time after the license is actually issued as well as at any time prior to the issuance of the license.

Stat. Auth.: ORS Ch. 651 & 658.415(14)

Stats. Implemented: ORS 658.420(3)

Hist.: BL 6-1984, f. & ef. 4-27-84

**839-015-0260**

**Procedure for Filing Protest**

- (1) Any individual desiring to protest the issuance of a farm and forest labor contractor license must file the protest in writing with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232
- (2) The written protest must contain the following information:
  - (a) Name, address and phone number of the individual filing the protest;
  - (b) Date of the protest;
  - (c) Name of licensee or license applicant against whom the protest is being made;
  - (d) A complete statement of the facts, circumstances and other reasons for the protest. The statement should include alleged violations, approximate dates of alleged violations, names of witnesses, if any, and any documents which support the allegations;
  - (e) The signature of the individual making the protest.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**Forms Prescribed by the Commissioner**

**839-015-0300**

**"Wage Certification" Form**

(1) Forest labor contractors engaged in the forestation or reforestation of lands must, unless otherwise exempt, submit a certified true copy of all payroll records to the Wage and Hour Division when the contractor or the contractor's agent pays employees directly as follows:

- (a) The first report is due no later than 35 days from the time the contractor begins work on each contract and must include whatever payrolls the contractor has paid out at the time of the report;
- (b) The second report is due no later than 35 days following the end of the first 35 day period on each contract and must include whatever payrolls have been issued as of the time of the report;
- (c) If the contract lasts more than 70 days, succeeding wage certification reports must include whatever payrolls the contractor has paid out at the time of the report, with the reports due at successive 35 day intervals, e.g. 105 days, 140 days from the time the contractor begins work on the contract.

(2) The certified true copy of payroll records may be submitted on Form WH-141. This form is available to any interested person. Any person may copy this form or use a similar form provided such form contains all the elements of Form WH-141.

(3) The wages paid to the officers of the corporation may be omitted from the Form WH-141 or the other records submitted under this rule.

(4) The certified true copy of payroll records shall be submitted to: Bureau of Labor and Industries, Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, N.E.; E-1 Salem, OR 97310.

(5) Contractors who have recruited, solicited or supplied workers from the state of Oregon who are employed on forestation/reforestation contracts located outside the State of Oregon must comply with the provisions of this rule.

Stat. Auth.: ORS Ch. 658.417(3)

Stats. Implemented: ORS 658.417(3)

Hist.: BL 7-1983(Temp), f. & ef. 8-5-83; BL 6-1984, f. & ef. 4-27-84; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96

**839-015-0310**

**Statement of Worker's Rights and Remedies**

(1) Every Farm and Forest Labor Contractor must furnish each worker with a written statement of the worker's rights and remedies under the Worker's Compensation Law, the Farm and Forest Labor Contractor Law, and Federal Service Contracts Act, The Federal and Oregon Minimum Wage Laws, Oregon Wage Collection Laws, Unemployment Compensation Laws, and Civil Rights laws. The form must be written in English and in the language used by the contractor to communicate with the workers.

(2) The form must be given to the workers at the time they are hired, recruited or solicited by the contractor or at the time they are supplied to another by the contractor, whichever occurs first.

(3) The Commissioner has prepared Form WH-151 for use by contractors in complying with this rule. The form is in English and Spanish and is available at any office of the Bureau of Labor and Industries.

Stat. Auth.: ORS Ch. 651 & 658.407(3)

Stats. Implemented: ORS 658.440(1)(f)(I)

Hist.: BL 6-1984, f. & ef. 4-27-84

**839-015-0320**

**Form of License**

In addition to the information required by ORS 658.430, the license form will contain such other information as the commissioner deems appropriate, including, but not limited to:

- (1) The indorsement required by ORS 658.417, 658.715 and by OR Laws, Chap. 73, Sec. 3, 1995, where appropriate.
- (2) A statement indicating whether the licensee is authorized to act as a farm labor contractor or whether the licensee is authorized to act as both a farm labor contractor and a forest labor contractor or whether the licensee is authorized to act as a farm-worker camp operator.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**Other Required Forms**

**839-015-0350**

**Work Agreements Between Farm Labor Contractor and Farmers**

- (1) Farm Labor Contractors are required to file information relating to their agreements with farmers with the Bureau.
- (2) The Commissioner has developed Form WH-152 which can be used to comply with this rule. Farm Labor Contractors may use any form for filing the information so long as it contains all the elements of Form WH-152.
- (3) Farm Labor Contractors must file this information with the Bureau by April 30 of each year. Amended or updated information may be filed at any time. All information must be filed with the Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, N.E., Salem, OR 97310.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.407(3) & 962

Stats. Implemented: ORS 658.440(1)(e)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90

**839-015-0360**

**Work Agreements Between Farm and Forest Labor Contractors and Their Workers**

- (1) Farm and forest labor contractors are required to file information relating to work agreements between the farm and forest labor contractors and their workers with the bureau.
- (2) The commissioner has developed Form WH-153 which, in conjunction with Form WH-151, Statement of Workers Rights and Remedies, can be used to comply with this rule. Farm and forest labor contractors may use any form for filing the information so long as it contains all the elements of Form WH-153 and Form WH-151.
- (3) Farm and forest labor contractors must file the form or forms used to comply with this rule with the bureau at the same time that the contractors apply for a license renewal.
- (4) Farm and forest labor contractors are required to furnish their workers with a written statement disclosing the terms and conditions of employment, including all the elements contained in Form WH-151 and if they employ workers, to execute a written agreement with their workers prior to the starting of work. The written agreement must provide for all the elements contained in Form WH-153. A copy of the agreement and the disclosure statement must be furnished to the workers in English and in any other language used to communicate with the workers. The disclosing statement must be provided to the workers at the time they are hired, recruited or solicited or at the time they are supplied to another by that contractor, whichever occurs first. Amended disclosure statements must be provided at any time any of the elements listed in the original statement change. A copy of the agreement must be furnished to workers prior to the workers starting work. Nothing in the written agreement relieves the contractor or any person for whom the contractor is acting of compliance with any representation made by the contractor in recruiting the workers.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 6-1996, f. & cert. ef. 1-9-96

**839-015-0370**

**Statement of Earnings; Statement of Prevailing Wage**

- (1) Farm and forest labor contractors are required to furnish each worker, each time the worker receives a compensation payment from the contractor, a written itemized statement of earnings. The written itemized statement must include:
  - (a) The total gross payment being made;
  - (b) The amount and purpose of each deduction from the gross payment;
  - (c) The total number of hours worked during the time covered by the gross payment;
  - (d) The rate of pay;
  - (e) If the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done;
  - (f) The net amount paid after any deductions;
  - (g) The employer's name, address and telephone number;
  - (h) The pay period for which the payment is made.
- (2) If the worker is being paid for work done under any law which requires the payment of a prevailing rate of wage (such as the Federal Service Contract Act, Davis-Bacon Act or state prevailing wage law), farm and forest labor

contractors must furnish the worker with a written statement specifying the amount to the prevailing wage rate required to be paid.

(3) The commissioner has prepared Form WH-154 which contains all the elements required by, and can be used to comply with, this rule. Farm and forest labor contractors may use any form for furnishing this information to workers so long as it contains all the elements of Form WH-154.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 2-1996, f. & cert. ef. 1-9-96

**Records**

**839-015-0400**

**Required Records**

- (1) All Farm and Forest Labor Contractors shall make and maintain for a period of three years records necessary to determine their compliance with ORS 658.405 to 658.475 and these rules.
- (2) Records necessary to determine compliance with the ORS 658.405 to 658.475 and these rules include, but are not limited to records of:
  - (a) The name and address of each worker (address includes both the permanent and local addresses of the worker);
  - (b) The name and address of each subcontractor;
  - (c) The work classification of each employee;
  - (d) The rate of monetary wages and fringe benefits, if any, paid to each employee;
  - (e) The total compensation paid to each employee during each pay period and the date it was paid;
  - (f) The dates of each employee's employment;
  - (g) The daily and weekly hours worked by each employee;
  - (h) Any deductions taken from the employee's total compensation and an explanation thereof;
  - (i) The actual net wages paid to each employee during each pay period;
  - (j) The agreements required to be furnished to each worker pursuant to OAR 839-015-0360;
  - (k) The agreements between the contractor and any subcontractors;
  - (l) The statement of worker's rights and remedies as required by OAR 839-015-0310;
  - (m) The statement of earnings and the statement of prevailing wage given to each employee as required by OAR 839-015-0370;
  - (n) The agreements between the contractor and farmers;

- (o) The contracts between the contractor and the owner or lessee of land intended to be used for the production of timber;
- (p) Any advances and payments thereon made to the contractor by a farmer or owner or lessee of land intended to be used for the production of timber;
- (q) Any payroll or other records pertaining to the contractor's business as a Farm or Forest Labor Contractor and the manner in which the contractor conducts such business;
- (r) The type and number of any identification the worker produced as evidence of his/her legal presence and legal employability in the United States.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.407(3) & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90

**839-015-0410**

**Records Availability**

Farm and Forest Labor Contractors will make available to representatives of the Wage and Hour Division records necessary to determine compliance with ORS 658.405 to 658.475 and these rules. Records will be made available upon request of such representatives.

Stat. Auth.: ORS Ch. 651 & 658.407(3)

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84

**Posting Requirements**

**839-015-0450**

**Notice of Compliance with Bond Requirements**

- (1) Every farm and forest labor contractor is required to post a notice of compliance with bond requirements in English and in any language used by the contractor to communicate with the contractor's workers. The notice must be posted in a conspicuous place on the job site where the contractor's employees are working and must be easily accessible to them.
- (2) The notice shall state that the contractor has complied with ORS 658.415 by obtaining a corporate surety bond or by making a deposit with the commissioner. The notice shall also indicate the amount of the surety bond or deposit and the expiration date of the bond or deposit, and that the surety bond or deposits are conditioned on the payment of wages and advances made by farmers or owners or lessees of land intended to be used for the production of timber.
- (3) The notice shall contain the name and Oregon address of the surety on the bond, if applicable, or the address of the bureau when a deposit is made with the commissioner.

(4) The commissioner has prepared a notice (WH-155) in English and Spanish which complies with this rule. Contractors may use any form or notice so long as it contains all the elements of Form WH-155.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**Enforcement**

**839-015-0500**

**Action Against the Bond or Deposit**

(1) Any person not paid wages owed to him/her by a farm or forest labor contractor or any farmer or owner or lessee of land intended to be used for the production of timber not paid advances due them by the farm or forest labor contractor has a right of action against the surety on the bond or deposit with the commissioner. The individual may exercise this right or may assign this right to another.

(2) The action on the bond or on the deposit held by the commissioner may not be joined in a suit or action on the bond or against the commissioner brought for any other claim.

(3) Any person seeking to recover on the bond or from the deposit with the commissioner must first establish the licensee's liability. The liability may be established in any of the following ways:

- (a) A judgment of the court;
- (b) A final administrative order issued pursuant to statute or rule;
- (c) The acknowledgment of the contractor of such liability;
- (d) Other satisfactory evidence of liability as may be shown which establishes the liability.

(4) Claims against the bond or deposit will not be paid unless, within six months of the end of the period during which the bond or deposit applies, the claimant or claimant's assignee gives notice of the claim by certified mail to the surety or the commissioner. Notice of claim shall be sufficient if it states that a wage claim is being made by the worker against the contractor, and it is not a defense to payment on the bond or deposit that the amount of the wage claim is not specified in the notice, or that the ultimate amount of wages found to be due is greater than the amount specified in the notice.

(5) Any claim or notice of claim filed pursuant to a claimant's right of action must be filed as follows:

- (a) If the filing is against a surety bond, the claim or notice must be filed with the surety. The name and address of the surety may be obtained from the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232;
- (b) If the filing is against a deposit held by the commissioner, the claim or notice must be filed with the Bureau of Labor and Industries, Wage and Hour Division, License Unit, 800 NE Oregon Street #32, Portland, OR 97232.
- (6) The commissioner and the surety shall make payments on the bond or deposit in the following priority:

- (a) Payments on wage claims;
  - (b) Payments on advances made to or on behalf of the contractor by a farmer or an owner or lessee of land intended to be used for the production of timber;
  - (c) If there are insufficient funds to pay all wage claims in full, such claims will be paid in part;
  - (d) If there are insufficient funds to pay advances in full after all wage claims are paid, such advances will be paid in part.
- (7) In order to insure that all wage claims will be accorded priority treatment as required by ORS 658.415(9)(a), the commissioner may delay any payments for advances claimed, until the expiration of the time within which wage claims may be submitted. The commissioner may make conditional payment based upon adequate security that subsequent wage claims will be paid.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**Payment by Contractor of Certain Travel, Food and Lodging Expenses of Worker**

**839-015-0502**

**Travel of Workers Prior to the Availability of Employment/Provision of Food and Lodging**

- (1) When a worker is recruited or solicited for work and the worker is required to travel from one place to another before there is work available, the farm or forest labor contractor shall furnish to the worker, at no cost to the worker, food and lodging until the work begins. The contractor shall provide, without cost to the worker, the following:
- (a) Lodging facilities which comply with the provisions ORS Chapter 654 and the rules adopted thereunder; and
  - (b) An adequate supply of food to feed the worker at least twice in a 24 hour period.
- (2) The lodging facilities and adequate supply of food referred to in section (1) of this rule shall be provided by the contractor to the worker at no cost to the worker for as long as the worker must wait for work to become available.
- (3) The worker may not be charged the cost of food and lodging provided pursuant to section (1) of this rule before or after the worker starts work.
- (4) As used in this rule an "adequate supply of food" means an amount and variety of food sufficient to meet commonly accepted daily nutritional requirements for adults, minors, males or females, as the case may be.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0503**



**Travel of Workers to Alternative Work Sites/Payment of Certain Transportation Costs**

When a worker arrives at a place of employment pursuant to OAR 839-015-0502(1), and work is not available to that worker within 30 days of the date the work was represented to begin, the contractor shall:

- (1) Refund to the worker, all sums paid to the contractor by the worker.
- (2) Provide to the worker cash or a negotiable instrument in an amount sufficient to pay for one of the following circumstances:
  - (a) The cost of transportation, including the cost of meals and lodging while in transit, to return the worker to the place where the worker left as a result of the recruitment or solicitation; or
  - (b) At the option of the worker, the cost of transportation, including meals and lodging while in transit to any other worksite selected by the worker, but no greater amount need be paid than the amount specified in subsection (a) of this section.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.440(2)(c) & 962

Stats. Implemented: ORS 658.440(2)(c)

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

**839-015-0504**

**Application of OAR 839-015-0502 and 839-015-0503 Limited**

- (1) OAR 839-015-0502 and 839-015-0503 do not apply to workers who, pursuant to OAR 839-015-0502(1), arrive at a place of employment before the date instructed by the contractor or agreed to by the worker and the contractor. The provisions of such rules are applicable only on and after the date agreed upon, when no work is available on that date.
- (2) OAR 839-015-0502 and 839-015-0503 do not apply to workers who have been provided housing or employment and who have not otherwise been recruited or solicited by the contractor or the contractor's agent prior to the arrival of the worker at the place of housing or employment.

Stat. Auth.: ORS Ch. 164, 165, 651, 658.440(2)(c) & 962

Stats. Implemented: ORS 658.440(2)(c)

Hist.: BL 3-1990, f. & cert. ef. 3-1-90

**Civil Penalties for Farm and Forest Labor Contractor Violations**

**839-015-0505**

**Definitions**

As used in OAR 839-015-0505 to 839-015-0530:

- (1) "Knowingly" or "willfully" means action undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have know the thing to be done or omitted. A person "should have known the

thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts knowingly or willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of this rule, the farm labor contractor, forest labor contractor or any person acting as a farm or forest labor contractor is presumed to know the affairs of their business operations relating to farm or forest labor contracting.

(2) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0507**

**Violations Separate and Distinct**

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS Ch. 651 & 658.407(3)

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88

**839-015-0508**

**Violations for Which a Civil Penalty May Be Imposed**

- (1) Pursuant to ORS 658.453, the commissioner may impose a civil penalty for violations of any of the following statutes:
- (a) Recruiting, soliciting, supplying or employing workers without a license to act as a farm or forest labor contractor in violation of ORS 658.410;
  - (b) Failure of the farm or forest labor contractor to, before beginning work on any contract or other agreement:
    - (A) Display the license or temporary permit to the person to whom workers are to be provided, or to the person's agent; or
    - (B) Provide to the person to whom workers are to be provided, or to the person's agent, a copy of the license or temporary permit pursuant to ORS 658.437(1).
  - (c) Failing to post a notice in English and in any other language used to communicate with workers that the contractor has a bond or deposit and where claims can be made against the bond or deposit in violation of ORS 658.415(15);
  - (d) Failing to file a change of address notice with the U.S. Post Office and the bureau in violation of ORS 658.440(1)(b);
  - (e) Failing to pay or distribute when due any money or other valuables entrusted to the contractor in violation of ORS 658.440(1)(c);

- (f) Failing to comply with contracts or agreements entered into as a contractor in violation of ORS 658.440(1)(d);
  - (g) Failing to furnish each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement that contains the terms and conditions described in ORS 658.440(1)(f);
  - (h) Failing to execute a written agreement between the worker and the farm labor contractor containing the terms and conditions described in ORS 658.440(1)(f), at the time of hiring and prior to the worker performing any work for the farm labor contractor;
  - (i) Failing to furnish each worker with an itemized deduction statement and statement as to the rate of wage to be paid and other information in violation of ORS 658.440(1)(h);
  - (j) Making misrepresentations, false statements or willful concealments on the license applications in violation of ORS 658.440(3)(a);
  - (k) Willfully making or causing to be made any false, fraudulent or misleading information concerning the terms, conditions or existence of employment in violation of ORS 658.440(3)(b);
  - (l) Soliciting or inducing or causing to be solicited or induced a violation of an existing employment contract in violation of ORS 658.440(3)(c);
  - (m) Knowingly employing an alien not legally employable or present in the United States in violation of ORS 658.440(3)(d);
  - (n) Assisting an unlicensed person to act as a contractor in violation of ORS 658.440(3)(e);
  - (o) Inducing in any manner whatsoever an employee or subcontractor to give up any part of the employee's or subcontractor's compensation to which they are entitled to under an employment contract or under federal or state wage laws in violation ORS 658.440(3)(f);
  - (p) Soliciting, inducing, or causing to be solicited or induced, the travel of a worker from one place to another by representing to a worker that employment for the worker is available at the destination when employment for the worker is not available within 30 days after the date work was represented as being available, is in violation of ORS 658.440(3)(g);
  - (q) Discharging or in any other manner discriminating against employees in violation of ORS 658.452;
  - (r) Failing to provide lodging and food when required by ORS 658.440(2)(c) and these rules;
  - (s) Failing to carry the license in violation of ORS 658.440(1)(a);
  - (t) Failing to exhibit the license in violation of ORS 658.440(1)(a).
- (2) In the case of forest labor contractors, in addition to any other penalties, a civil penalty may be imposed for each of the following violations:
- (a) Failing to obtain a special indorsement from the bureau to act as a forest labor contractor in violation of ORS 658.417(1);
  - (b) Failing to provide certified true copies of payroll records in violation of ORS 658.417(3);
  - (c) Failing to provide workers' compensation insurance in violation of ORS 658.417(4).
- (3) The commissioner may impose a civil penalty on a person to whom workers are to be provided, or on the person's agent, when the person uses an unlicensed farm or forest labor contractor without first:

- (a) Examining the license or temporary permit of the farm or forest labor contractor; and
- (b) Retaining a copy of the license or temporary permit provided to the person by the farm or forest labor contractor, pursuant to ORS 658.453(1)(f).

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0510**

**Criteria for Determining a Civil Penalty**

- (1) The commissioner may consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be imposed, and shall cite those the commissioner finds to be appropriate:
  - (a) The history of the contractor or other person 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 contractor or other person knew or should have known of the violation.
- (2) It shall be the responsibility of the contractor or other person to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be imposed.
- (3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of money or valuables, if any, taken from employees or subcontractors by the contractor or other person in violation of any statute or rule.
- (4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor or other person for the purpose of reducing the amount of the civil penalty to be imposed.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0512**

**Schedule of Civil Penalties**

- (1) The civil penalty for any one violation shall not exceed \$2,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.
- (2) For purposes of this rule, "repeated violations" means violations of a provision of law or rule which have been violated on more than one contract within 2 years of the date of the most recent violation.

(3) When the Commissioner determines to impose a civil penalty for acting as a farm or forest labor contractor without a valid license, the minimum civil penalty shall be as follows:

- (a) \$500 for the first violation;
- (b) \$1,000 for the first repeated violation;
- (c) \$2,000 for the second and each subsequent repeated violation.

(4) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to OAR 839-015-0510.

(5) The civil penalties set out in this rule are in addition to any other penalty assessed by law or rule.

Stat. Auth.: ORS Ch. 658.407

Stats. Implemented: ORS 658.453

Hist.: BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 5-1996, f. 6-14-96, cert. ef. 7-1-96

## **839-015-0520**

### **Denying, Suspending, Revoking or Refusing to Renew License**

(1) The following violations are considered to be of such magnitude and seriousness that the Commissioner may propose to deny or refuse to renew a license application or to suspend or revoke a license:

- (a) Making a misrepresentation, false statement or certification or willfully concealing information on the license application;
- (b) Causing an existing contract of employment to be violated;
- (c) Knowingly employing an alien not legally present or legally employable in the United States;
- (d) Assisting an unlicensed person to act as a farm or forest labor contractor;
- (e) In any way inducing an employee or subcontractor of the contractor to give up any part of the compensation to which the employee or subcontractor is entitled under a contract or under federal or state wage laws;
- (f) Discharging or discriminating in any way against an employee as per ORS 658.452;
- (g) Intentionally altering a license or permit, or using the license or permit of another;
- (h) Knowingly permitting another to use the licensee's license or permit; or
- (i) Acting as a farm or forest labor contractor without a license.

(2) When the applicant for a license or a licensee demonstrates that the applicant's or licensee's character, reliability or competence makes the applicant or licensee unfit to act as a farm or forest labor contractor, the Wage and Hour Division shall propose that the license application be denied or license of the licensee be suspended, revoked or not renewed.

(3) The following actions of a farm or forest labor contractor license applicant or licensee or an agent of the license applicant or licensee demonstrate that the applicant's or the licensee's character, reliability or competence make the applicant or licensee unfit to act as a farm or forest labor contractor:

- (a) Violations of any section of ORS 658.405 to 658.485;
  - (b) Conviction of a felony in connection with the applicant's or licensee's business operations as a farm or forest labor contractor;
  - (c) Willful violation of the terms and conditions of any work agreement or contract;
  - (d) Failure to comply with federal, state or local laws or ordinances relating to the payment of wages, income taxes, social security taxes, unemployment compensation tax or any tax, fee or assessment of any sort;
  - (e) Knowing failure or refusal to seek food, water, shelter, or medical attention, or to provide any other necessary goods or services required by law for the safety and health of workers;
  - (f) Repeated failure to file or furnish all forms and other information required by ORS 658.405 to 658.503 or these rules;
  - (g) Failure to report any change in the circumstances under which the license was issued, including the failure to notify the Bureau of any change in the permanent or temporary address of the applicant or licensee;
  - (h) Willful misrepresentation, false statement or concealment in the application for a license;
  - (i) Willfully making or causing to be made to any person any false, fraudulent or misleading representation, or publishing or circulating any false, fraudulent or misleading information concerning the terms, conditions or existence of employment at any place or by any person;
  - (j) Failure to provide workers compensation coverage for each worker or to make worker's compensation insurance premium payments when due;
  - (k) Employing or using an agent who has had a farm or forest labor contractor license denied, suspended, revoked or not renewed or who has otherwise violated ORS 658.405 to 658.503;
  - (l) Failure to maintain the bond or cash deposit as required by ORS 658.405 to 658.503 or these rules.
  - (m) A course of misconduct in relations with workers, farmers and others with whom the person conducts business;
  - (n) Failure to pay all debts owed, including advances and wages, in a timely manner;
  - (o) Failure to promptly satisfy any or all judgments levied against the applicant/licensee;
  - (p) Conduct of the applicant/licensee resulting in the inability to obtain a bond.
- (4) When a farm or forest labor contractor's license application is denied or a license is revoked or when the commissioner refuses to renew a license, the commissioner will not issue the applicant or licensee a license for a period of three (3) years from the date of the denial, refusal to renew or revocation of the license.
- (5) Notwithstanding section (4) of this rule, the commissioner, for good cause shown, may issue a license to a contractor whose application has been previously denied or whose license was not renewed or was revoked before the expiration of three years, provided:
- (a) The contractor submits a petition explaining each and every reason why the contractor should be licensed; and
  - (b) The contractor files a completed application with the petition and pays the appropriate fees.
- (6) As used in section (5) of this rule, "good cause" means an excusable mistake or a circumstance beyond a person's control.

- (7) The commissioner shall grant or deny the petition referred to in section (5) of this rule and in so doing shall consider the following factors:
- (a) The magnitude and seriousness of the violation or violations which led to the denial, refusal to renew or revocation of the license;
  - (b) The petitioner's past history in taking all necessary measures to prevent or correct violations of statutes or rules;
  - (c) The petitioner's other prior violations of the statute or rules, if any;
  - (d) Other matters which indicate to the commissioner that the petitioner is not likely to violate ORS 658.405 to 658.475 and these rules in the future.
- (8) Nothing in this rule shall preclude the commissioner from imposing a civil penalty in lieu of denying or refusing to renew a license application or in lieu of suspension or revocation of a license.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 11-1988(Temp), f. & cert. ef. 6-17-88; BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

**Emergency Suspension of License**

**839-015-0525**

**Immediate Suspension or Refusal to Renew a License; Notice of Opportunity for Hearing; Service**

- (1) If the Bureau finds there is a serious danger to the public health or safety, it may immediately suspend or it may refuse to renew a license. For purposes of this rule, such a decision is referred to as an emergency suspension order. An emergency suspension order is a written order which is not a final order under ORS Chapter 183. An emergency suspension order is not an order in a contested case and may be issued without notice or an opportunity for a hearing as required for contested cases under ORS Chapter 183.
- (2)(a) Except where the danger to the public health or safety is so imminent that opportunity for the licensee to object under section (3) of this rule is not practicable as determined by the Bureau, the Bureau shall provide the licensee with notice and opportunity to object prior to issuing the emergency suspension order. For purposes of this rule, this notice is referred to as a presuspension notice;
- (b) The presuspension notice shall:
- (A) Specify the acts of the licensee and the evidence available to the Bureau which would be grounds for revocation, suspension or refusal to renew the license under the Bureau's usual procedures;
  - (B) Specify the reasons why the acts of the licensee seriously endanger the public health or safety;
  - (C) Identify a person in the Bureau authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.
- (c) The Bureau may provide the presuspension notice to the licensee in writing, orally by telephone or in person, or by any other means available to the Bureau;

(d) Where the presuspension notice is given orally, the Bureau subsequently shall provide the licensee with a written copy of the notice.

(3) Following the presuspension notice, the Bureau shall provide the licensee an immediate opportunity to object to the Bureau's specifications provided in the presuspension notice before a person authorized to issue the emergency suspension order or to make recommendations regarding the issuance of the emergency suspension order.

(4)(a) When the Bureau issues the emergency suspension order, the Bureau shall serve the order on the licensee either personally or by registered or certified mail; and

(b) The order shall include the following statements:

(A) Those required under ORS 183.415(2) and (3);

(B) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order;

(C) That if the demand is not received by the agency within 90 days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing under ORS Chapter 183;

(D) The effective date of the emergency suspension order;

(E) The specifications noted in subsection (2)(b) of this rule;

(F) That with the agreement of the licensee and the Bureau the hearing opportunity on the emergency suspension order may be combined with any other Bureau proceeding affecting the license. The procedures for a combined proceeding shall be those applicable to the other proceeding affecting the license.

(5)(a) If timely requested by the licensee pursuant to subsection (4)(b) of this rule, the Bureau shall hold a hearing on the emergency suspension order as soon as practicable; and

(b) At the hearing, the Bureau shall consider the facts and circumstances including, but not limited to:

(A) Whether at the time of issuance of the order there was probable cause to believe from the evidence available to the Bureau that there were grounds for revocations, suspension or refusal to renew the license under the Bureau's usual procedures;

(B) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety;

(C) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order;

(D) Whether the Bureau followed the appropriate procedures in issuing the emergency suspension order.

Stat. Auth.: ORS Ch. 164, 165, 651, 658 & 962

Stats. Implemented: ORS

Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 3-1990, f. & cert. ef. 3-1-90

## 839-015-0530

### Knowing Employment of an Alien not Legally Present or Legally Employable in the United States

(1) A contractor knowingly employs an alien who is not legally present or legally employable in the United States, in



violation of ORS 658.440(2)(d), if the contractor:

(a) Actually knows that the alien is not legally present and/or not legally employable in the United States; or

(b) Would know that fact if the contractor made efforts to ascertain the alien's status in the United States which were reasonably diligent under the circumstances as the contractor knows them.

(2) Efforts to ascertain an alien's status in the United States which are reasonably diligent under the circumstances as a contractor knows them include but are not limited to the following actions by the contractor:

(a) Making clear to all applicants, hirees and workers that they cannot work for the contractor unless they are legally present and legally employable in the United States;

(b) Taking one of the following actions:

(A) Requiring that every hiree produce documentary proof that he/she is legally present and legally employable in the United States before he/she begins work; or

(B) Asking all applicants for employment if they are U.S. citizens and requiring that any applicant who has indicated that she/he is not a U.S. citizen, and whom the contractor intends to hire, produce such proof.

(c) Familiarizing itself with pertinent U.S. Immigration and Naturalization Service (INS) regulations and procedures, the types of documentary proof listed in section (4) of this rule, and the other types of documentary identification of aliens issued by INS; and

(d) Making additional efforts to better discourage and detect the presence of aliens not legally present and/or not legally employable in the United States in the contractor's workforce, if the contractor knows or should know that the contractor's past efforts to accomplish that objective have been unsuccessful.

(3) A contractor should be suspicious that an applicant, hiree or worker is not legally present and/or not legally employable in the United States if, for example:

(a) The documentation of that individual's status in the United States:

(A) Does not evidence the individual's legal presence and legal employability in the United States;

(B) Appears on its face to be counterfeit;

(C) Includes information which does not match the individual offering the documentation; or

(D) In the case of documentation of alien status, does not match the INS specimens of the documentary identification which INS issues for aliens;

(b) The applicant, hiree or worker has given the contractor contradictory information relating to his/her status in the United States or information on that subject which conflicts with pertinent INS regulations and procedures;

(c) The contractor knows or should know that the applicant, hiree or worker has been apprehended by INS as an alien not legally present or legally employable in the United States and/or, because of that status, returned to the alien's country of citizenship; or

(d) The contractor is aware of information indicating that the applicant, hiree or worker is an alien not legally present or legally employable in the United States.

(4) Documentary proof that an individual is legally present and legally employable in the United States includes:

(a) Acceptable evidence of United States' citizenship:

- (A) Birth certificate showing place of birth within the United States, its territories or possessions;
- (B) Certificate of citizenship;
- (C) Certificate of naturalization;
- (D) U.S. identification card (INS Form I-179 or I-197);
- (E) Passport issued by the United States identifying the individual as a citizen of the United States;
- (F) Consular report of birth (State Department Form FS-40);
- (G) Baptismal certificate under seal of a church or other religious body which practices infant baptism showing the individual's date and place of birth within the United States, its territories or possessions;
- (H) A document under seal of a religious body which does not practice infant baptism showing the individual's date and place of birth within the United States, its territories or possessions;
- (I) Tribal enrollment card in an American Indian tribe recognized by the Bureau of Indian Affairs;
- (J) Other written advice from INS attesting that the individual is a citizen of the United States;
- (K) A copy of a declaration, signed by the person under penalty of prosecution for violation of **Title 18 U.S.C. 1001**, and witnessed by the signature of the appropriate official of the U.S. Employment Service, affixed in the presence of the applicant, filed with the U.S. Employment Service or any of its affiliated offices, attesting that such individual is a citizen of the United States, was born at the place stated and on the date set forth thereon, and reciting the following additional information:
  - (i) Social security number of such individual (voluntary); and
  - (ii) Names and addresses of three adult citizens of the United States who can be contacted to verify the individual's citizenship.
- (L) A certificate issued by the U.S. Department of Labor, Bureau of Employment Security, or the Commonwealth of Puerto Rico which attests that, based upon examination of any of the documents prescribed by paragraphs (a)(A) through (L) of this section, the individual named and identified by the picture on that certificate was born within the United States (including its territories and possessions) at the place and on the date specified thereon and which sets forth such individual's home address (street and number, city, state, and zip code) and social security number.
  - (b) INS Form I-151 or I-551, Alien Registration Receipt Card;
  - (c) INS Form I-94 (with or without a passport) bearing an employment authorization consisting of the words "Employment Authorized";
  - (d) INS Form I-94 (with or without a passport) bearing the designation of H-2, as endorsed on the front or back of the form, authorizing an individual to engage only in agricultural employment during the period of such individual's authorized stay in the United States;
  - (e) INS forms I-688 and I-688A;
  - (f) Any other written document from INS indicating that the individual is an alien authorized by INS to accept such employment in the United States; or
  - (g) U.S. Armed Forces Discharge Papers.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 164, 165, 651, 658.407(3) & 962

Stats. Implemented: ORS 658.440(3)(d)

Hist.: BL 6-1984, f. & ef. 4-27-84; BL 3-1990, f. & cert. ef. 3-1-90

**Private Right of Action**

**839-015-0600**

**Procedure for Filing Civil Action under ORS 658.453(4)**

- (1) Any worker who wishes to file a civil action pursuant to ORS 658.453(4) must file a complaint with the commissioner.
- (2) The complaint shall be in writing, and shall contain the name or names of the persons or entities against whom the complaint is being filed. A copy of the proposed complaint to be filed with the court should, if available, be attached to the complaint filed with the commissioner. The worker filing the complaint with the commissioner should also state whether the worker intends to pursue a private civil court action.
- (3) The complaint shall be considered filed with the commissioner on the date that it is mailed to the following address: Bureau of Labor and Industries; Wage and Hour Division, 800 NE Oregon Street #32, Portland, OR 97232.
- (4) The complaint that is filed with the commissioner should be filed prior to the filing in court of a civil complaint pursuant to ORS 658.453(4). However, if the complaint filed with the commissioner is not filed prior to the filing of a complaint in court but is done so before the entry of a final judgment, it shall be considered to be filed timely for purposes of ORS 658.453(4).

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

**839-015-0605**

**Knowingly Using the Services of an Unlicensed Contractor**

- (1) Pursuant to ORS 658.465(1), any person who knowingly uses the services of an unlicensed farm or forest labor contractor is personally, jointly and severally liable with the person acting as a farm or forest labor contractor to the same extent and same manner as provided in ORS 658.453(4).
- (2) A person knowingly uses the services of an unlicensed farm or forest labor contractor in violation of ORS 658.465(1), if the person:
  - (a) Uses the services of a person acting as a farm or forest labor contractor and the person actually knows that the contractor does not have a valid license to act as a farm or forest labor contractor;
  - (b) Uses the services of an unlicensed farm or forest labor contractor without having first completed one of the

following steps:

(A) Inspected an apparently valid farm or forest labor contractor's license which has not expired, which appears to be issued to the contractor, and which bears a forestry endorsement, if required;

(B) Confirmed that the name of the contractor appears on the current list of farm and forest labor contractors distributed by the Bureau of Labor and Industries as holding a valid license for the Services which are contemplated by the user; or

(C) Obtained telephonic confirmation from the Bureau of Labor and Industries that the contractor is properly licensed to engage in the activities contemplated, and recorded the time, date, and name of the staff person of the Bureau who has provided the information.

Stat. Auth.: ORS Ch. 651 & 658.407(3)

Stats. Implemented: ORS 658.465(1)

Hist.: BL 16-1988, f. & cert. ef. 12-13-88

## 839-015-0610

### Actions Under ORS 658.475 for Injunctive or Declaratory Relief and Damages

(1) Any person who wishes to file a civil action pursuant to ORS 658.475 is not required to file a complaint with the commissioner. However, if a person filing such action desires to notify the commissioner, he/she may do so by sending a copy of the complaint that the person filed with the court to: Bureau of Labor & Industries, Wage and Hour Division, 800 NE Oregon Street #32, Portland, OR 97232.

(2) The damages provided for in ORS 658.475 are in addition to damages provided for in any other statute including, but not limited to, ORS 658.453(4).

(3) The commissioner or any other person, including workers, may bring a civil action under ORS 658.475.

Stat. Auth.: ORS Ch. 651 & 658

Stats. Implemented: ORS 658.405 - 658.503

Hist.: BL 16-1988, f. & cert. ef. 12-13-88; BL 2-1996, f. & cert. ef. 1-9-96

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 16**

**PREVAILING WAGE RATES ON PUBLIC WORKS**

**Procedural Rules**

**839-016-0000**

**Notice of Proposed Rules**

Prior to the adoption, amendment, or repeal of any rule relating to Prevailing Wage Rates on Public Works, the Bureau of Labor and Industries shall give notice of intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) By mailing a copy of the notice of intended action to persons on the Wage and Hour Division's mailing list for Prevailing Wage Rates on Public Works established pursuant to ORS 183.335(7).
- (3) By mailing a copy of the notice of intended action to:
  - (a) Associated Press;
  - (b) Oregon State Building and Construction Trades Council;
  - (c) The Northwest Labor Press;
  - (d) Associated General Contractors;
  - (e) Oregon AFL-CIO;
  - (f) Daily Journal of Commerce;
  - (g) Associated Oregon Industries;
  - (h) State of Oregon, Department of Administrative Services;
  - (i) State of Oregon, Department of Transportation;

- (j) Oregon State System of Higher Education;
- (k) Association of Oregon Counties;
- (l) League of Oregon Cities;
- (m) Oregon School Boards Association;
- (n) Associated Builders and Contractors;
- (o) Other associations and governmental entities as appropriate.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0002**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective September 9, 1995, are hereby adopted by reference as permanent rules for Prevailing Wage Rates on Public Works matters except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of ORS Chapter 279 enforced by the Bureau of Labor and Industries. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183, 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 9-1986, f. & ef. 9-2-86; BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0004**

**Definitions**

As used in these rules, unless the context requires otherwise:

- (1) "Apprentice" means:
  - (a) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training (BAT) or with any state apprenticeship agency recognized by BAT; or
  - (b) A person in probationary employment as an apprentice in such an apprenticeship program, but who is not individually registered in the program, but who has been certified by the BAT or a state apprenticeship agency to be eligible for probationary employment as an apprentice.
- (2) "The Basic Hourly Rate of Pay" or "Hourly Rate" means the rate of hourly wage, excluding fringe benefits, paid to

the worker.

(3) "Bureau" means the Bureau of Labor and Industries.

(4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries, or designee.

(5) "Construction" means the initial construction of buildings and other structures, or additions thereto, and of highways and roads. "Construction" does not include the transportation of material or supplies to or from the public works project by employees of a construction contractor or construction subcontractor.

(6) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(7) "Employ" includes to suffer or permit to work.

(8) "Fringe benefits" means the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program which is committed in writing to the workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state or local law to provide any of such benefits. Other bona fide fringe benefits do not include reimbursement to workers for meals, lodging or other travel expenses, nor contributions to industry advancement funds (CIAF for example).

(9) "Major renovation" means the remodeling or alteration of buildings and other structures within the framework of an existing building or structure and the alteration of existing highways and roads, the contract price for which exceeds \$25,000.

(10) "Normal business hours" means the hours during which the office of the contractor or subcontractor is normally open for business. In the absence of evidence to the contrary, the Division will consider the hours between 8:00 a.m. and 5:00 p.m., excluding the hours between 12:00 noon and 1:00 p.m., on weekdays as normal business hours.

(11) "Overtime" means:

(a) In the case of "overtime hours worked"; all time worked over eight hours in one work day and on Saturdays and holidays set out in ORS 279.334;

(b) In the case of "overtime rate"; the basic hourly rate of pay times 1-1/2;

(c) In the case of "overtime wages"; the overtime hours worked times the overtime rate.

(12) "Person" includes a public or private corporation, a partnership, a sole proprietorship, a limited liability company, a government or governmental instrumentality.

(13) "Prevailing wage rate claim" means a claim for wages filed by a worker with the Division.

(14) "Public agency" means 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.

(15) "Public work", "public works" or "public works project" includes but is not limited to roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is



carried on or contracted for by any public agency the primary purpose of which is to serve the public interest regardless of whether title thereof is in a public agency but does not include the reconstruction or renovation of privately owned property which is leased by a public agency.

(16) "Public works contract" or "contract" means any contract, agreement or understanding, written or oral, into which a public agency enters for any public work.

(17) "Reconstruction" means highway and road resurfacing and rebuilding, the restoration of existing highways and roads, and the restoration of buildings and other structures.

(18) "Reconstruction or renovation of privately owned property which is leased by a public agency" includes improvements of all types within the framework or footprint of an existing building or structure.

(19) "Site of work" is defined as follows:

(a) The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, and other adjacent or nearby property used by the contractor or subcontractor in such construction which can reasonably be said to be included in the site.

(b) Except as provided in paragraph (c) of this section, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards and similar facilities, are part of the site of work provided they are dedicated exclusively, or nearly so, to the performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them. Such facilities which are established by a supplier of materials for the project after the opening of bids shall be deemed to be dedicated exclusively to the performance of the contract or project.

(c) Not included in the site of work are permanent home offices, branch plant establishments, fabrication plants, and tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, and similar facilities of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the site of work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract or project.

(20) "Special wage determination" means a wage determination made at the request of a public contracting agency and which is applicable only to specific job classes. A special wage determination is issued in those cases where there is no current wage determination applicable to specific job classes and the use of such job classes is contemplated on a public works project.

(21) "Trade" or "occupation" is defined in accordance with the prevailing practices of the construction industry in Oregon.

(22) "Trainee" means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Bureau of Apprenticeship and Training as meeting its standards for on-the-job training programs and which has been so certified by that Bureau.

(23) "Wage determination" includes the original decision and any subsequent amendments made by the commissioner in accordance with ORS 279.359.

(24) "Wages" or "Prevailing Wages" means the basic hourly rate of pay and fringe benefits as defined in section (8) of this rule.

(25) "Worker" means a person employed on a public works project and whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental, professional or managerial. The term "worker" includes apprentices, trainees and any person employed or working on a

public works project in a trade or occupation for which the commissioner has determined a prevailing rate of wage. (See OAR 839-016-0035.)

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**839-016-0006**

**Procedure for Addition of Trade**

(1) Purpose: As a result of technological advancements and/or policy changes, new trades periodically emerge in the construction industry. When this happens, it may be appropriate for the commissioner to add such trades into the prevailing wage rate determinations. The following procedure is designed to insure that new trades are included in prevailing wage rate determinations when appropriate.

(2) Procedure:

(a) Any person may request the addition of a trade by submitting a written request to: PWR Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232. This request must, at a minimum, specify:

(A) Name of proposed trade;

(B) Minimum education required; and

(C) Description of minimum skills required and tools used.

(b) The PWR Coordinator will recommend to the commissioner whether or not to conduct a complete study of the proposed trade;

(c) The requesting party will be notified in writing by the PWR Coordinator of the commissioner's decision;

(d) If the PWR Coordinator conducts the requested study, the following areas, at a minimum, will be included in the review:

(A) Relevant practices of the U.S. Department of Labor under the Davis-Bacon Act;

(B) Whether the proposed trade is substantially different from trades included in the current wage determination;

(C) The relevant prevailing practices in the State of Oregon.

(e) The PWR Coordinator will submit a report and a recommendation to the commissioner;

(f) The commissioner will decide whether or not to include the proposed trade;

(g) The requesting party will be notified in writing of the commissioner's decision.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0007**

**Procedure for Special Wage Determination**

- (1) Purpose: In planning a public works project, public contracting agencies periodically require the use of a trade not normally included in wage determinations. Special Wage Determinations allow the commissioner to recognize a trade and establish a rate for it. This procedure also allows the commissioner to respond in a timely fashion to the needs of the contracting agency. Special Wage Determinations are not available when the wage determination is applicable.
- (2) Procedure:
- (a) Any public contracting agency may request a special Wage Determination. The request must contain, a written description of the work to be performed and an identification of the requested trade(s). It must be sent to: PWR Coordinator, Prevailing Wage RATE Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232;
- (b) Within two weeks the PWR Coordinator will recommend to the commissioner whether or not a special Wage Determination should be established;
- (c) If a special Wage Determination is to be allowed, the PWR Coordinator will provide the requesting agency with the instruments, procedures, and minimum requirements for conducting a wage survey;
- (d) The requesting agency will conduct the wage survey in accordance with Bureau procedures and submit the results to the PWR Coordinator;
- (e) The PWR Coordinator will review the data for methodological compliance and accuracy and submit it to the commissioner with a recommendation;
- (f) The commissioner will approve or disapprove the special wage determination request after considering the PWR Coordinator's recommendation;
- (g) The contracting agency will be notified, in writing, of the commissioner's final decision;
- (h) If the special wage determination is approved, it is valid only for the locality specified in the special wage determination and only until the first day of July following the date of approval unless amended prior to that date;
- (i) A copy of the approved special wage determination will be kept on file by the PWR Coordinator and the Wage and Hour Division.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0008**

**List of Planned Public Improvements**

(1) As used in this rule the term "Public improvement" has the same meaning as it does in ORS 279.011(7).

(2) Each public agency shall prepare and file with the commissioner a list of every public improvement known to the agency that the agency plans to fund during the subsequent budget period. The list must be filed with the commissioner not less than 30 days prior to the adoption of the agency's budget. In the case that the agency revises its list after the adoption of its' budget, the agency shall file the revised list with the commissioner at that time. The list shall be filed with: Prevailing Wage RATE Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232.

(3) Copies of the lists of planned public improvements filed with the commissioner by public agencies as required by ORS 279.023(2) are available to the public upon request as follows:

(a) The request shall be in writing;

(b) The request shall be made to: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232;

(c) The request shall contain the following information:

(A) The name of the public agency;

(B) The name of any division, section or department of the public agency, if applicable;

(C) The approximate date of the budget period for which the list was filed.

(4) The cost of supplying copies requested in section (3) of this rule shall be calculated in accordance with OAR 839-030-0010, which sets forth the fees to be charged by the Bureau when responding to requests for copies of public records.

(5) As an aid to public contracting agencies to assist them in complying with the provisions of ORS 279.023 and these rules, the commissioner has prepared two forms which are attached to these rules as **Appendix 1** and **2**. The use of these forms by the public contracting agency is optional. However, the statutory requirements of ORS 279.023(2) are satisfied when they are completed and mailed to the Wage and Hour Division. The forms should be completed as follows:

(a) The Planned Public Improvement Summary form (**Appendix 1**) should be used to summarize all planned projects in the subsequent fiscal year, noting the project information requested on the form;

(b) Because ORS 279.023 requires public contracting agencies to show that they are conforming to state policy when they plan to use their own personnel and equipment on projects estimated to exceed \$50,000, the Capital Improvement Project Cost Comparison Estimate form (**Appendix 2**) should be completed for projects exceeding \$50,000 on which the agency will use its own personnel and equipment. In developing cost comparisons, unit costs which can be substantiated by the agency's cost accounting system should be used. Contractor unit prices that reflect bidding data should also be used.

[ED. NOTE: The Appendices referenced in this rule are not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries Division.]

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 3-1996, f. & cert. ef. 1-26-96

## Forms Prescribed by the Labor Commissioner

**839-016-0010****Payroll and Certified Statement**

- (1) The form required by ORS 279.354 shall be known as the Payroll and Certified Statement, Form WH-38. The Form WH-38 shall accurately and completely set out the contractors or subcontractor's payroll for the work week immediately preceding the submission of the form to the public contracting agency by the contractor or subcontractor.
- (2) A contractor or subcontractor must complete and submit the certified statement contained on Form WH-38. The contractor or subcontractor may submit the weekly payroll on the Form WH-38 or may use a similar form providing such form contains all the elements of Form WH-38.
- (3) When submitting the weekly payroll on a form other than Form WH-38, the contractor or subcontractor shall attach the certified statement contained on Form WH-38 to the payroll forms submitted.
- (4) Each Payroll and Certified Statement form shall be delivered or mailed by the contractor or subcontractor to the public contracting agency. Payroll and certified statement forms shall be submitted as follows:
  - (a) For any public works project of 90 days or less from the date of award of the contract to the date of completion of work under the contract, the form shall be submitted once within 15 days of the date the work first began on the project and once before the agency makes its final inspection of the project;
  - (b) For any public works project exceeding 90 days from the date of award of the contract to the date of completion of work under the contract, the form shall be submitted within 15 days of the date work first began on the project, at 90-day intervals thereafter, and before the agency makes its final inspection of the project.
- (5) Subcontractors beginning work on a project later than 15 days after the start of work on the project or finishing work 90 days prior to the final inspection of the work by the agency shall submit the payroll and certified statement as follows:
  - (a) For any public works project of 90 days or less from the date of award of the contract to the date of completion of work under the contract, the form shall be submitted once within 15 days of the date the subcontractor first began work on the project and once before the contractor makes its final inspection of the work performed by the subcontractor;
  - (b) For any public works project exceeding 90 days from the date of award of the contract to the date of completion of work under the contract, the form shall be submitted within 15 days of the date the subcontractor first began work on the project, at 90-day intervals thereafter, and before the contractor makes its final inspection of the work performed by the subcontractor.
- (6) When work on a project starts and finishes in 15 days or less, the contractor or subcontractor which performed the work shall submit a payroll and certified statement form which accurately and completely sets out the payroll for all the work performed on the project.
- (7) The Payroll and Certified Statement, Form WH-38, can be obtained from: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street, #32, Portland, OR 97232.
- (8) The Payroll and Certified Statement forms received by the public contracting agency are public records subject to the provisions of ORS 192.410 to 192.505. As such, they must be made available upon request.

Stat. Auth.: ORS Ch. 279 & 651.060

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 13-1992, f. & cert. ef. 12-14-9; BL 3-1996, f. & cert. ef. -1-26-96

**839-016-0013**

**Notice of Award Form**

- (1) The notification form required by ORS 279.363 shall be known as the Notice of Award of Public Works Contract form (Form WH-81). The commissioner has prepared a Notice of Award of Public Works Contract Form.
- (2) The Notice of Award of Public Works Contract, Form WH-81, can be obtained from: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232.
- (3) The Notice of Award of Public Works Contract, Form WH-81, shall be filed by the Public Contracting Agency which awarded the contract with the Wage and Hour Division, at the address indicated in section (2) of this rule, within 30 days of the date the contract was awarded.
- (4) Public contracting agencies are not required to file a Notice of Award of Public Works Contract form when the contract awarded is not regulated under the provisions of ORS 279.348 to 279.363.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

**Contract Requirements**

**839-016-0020**

**Required Conditions Relating to Prevailing Wages on Public Works Contracts and in Contract Specifications**

- (1) Every public works contract shall contain the following:
  - (a) A condition or clause that, if the contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public contracting agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. (Reference: ORS 279.314);
  - (b) A condition that no person shall be employed for more than eight (8) hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed shall be paid at least time and a half the person's regular rate of pay for all time worked in excess of eight hours a day and time worked on Saturday and on any legal holiday specified in ORS 279.334. (Reference: ORS 279.316);
  - (c) A condition that the contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. (Reference: ORS 279.320);
  - (d) A provision that each worker in each trade or occupation employed in the performance of the contract either by the

contractor, subcontractor or other person doing or contracting to do or contracting for the whole or any part of the work on the contract, shall be paid not less than the applicable prevailing rate of wage. This provision shall be included in all contracts regardless of the price of any individual contract, as long as the combined price of all contracts awarded on the project is \$25,000 or more. (Reference: ORS 279.352);

(e) A provision that the contractor shall pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price; that the fee shall be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee shall be made within 30 days of the final progress payment after completion of the contract; that the fee shall be delivered to the commissioner at the following address: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232. (Reference: ORS 279.352).

(2) The specifications of every public works contract shall contain the following:

(a) A provision stating the existing prevailing rate of wage in effect at the time the specifications are first advertised for bid solicitations. This provision shall be included in all contract specifications, regardless of the price of any individual contract, so long as the combined price of all contracts awarded on the project is \$25,000 or more. (Reference: ORS 279.352.) A statement incorporating the existing prevailing wage rate into the specifications by reference will not satisfy this requirement;

(b) A provision stating that the contractor shall pay to the commissioner a fee equal to one tenth of one percent (.001) of the contract price but no less than \$100 nor more than \$5,000 regardless of the contract price; that the fee shall be paid no later than 10 days after receipt of the first progress payment or 60 days after work on the contract has begun, whichever comes first; that final adjustments to the fee shall be made within 30 days of the final progress payment after completion of the contract; that the fee shall be delivered to the commissioner at the following address: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232. (Reference: ORS 279.352)

(3) Public contracting agencies may obtain, without cost, a copy of the existing prevailing rate of wages for use in preparing the contract specifications by contacting any office of the Bureau or by writing to the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon St. #32, Portland, OR 97232.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 3-1996, f. & cert. ef. 1-26-96; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**Records**

**839-016-0025**

**Required Records**

(1) All contractors and subcontractors performing work on public works contracts shall make and maintain for a period of three (3) years from the completion of work upon such public works records necessary to determine whether the prevailing rate of wage and overtime has been or is being paid to workers upon public works.

(2) In addition to the Payroll and Certified Statement, Form WH-38, records necessary to determine whether the prevailing wage rate and overtime wages have been or are being paid include but are not limited to records of:

- (a) The name and address of each employee;
  - (b) The work classification or classifications of each employee;
  - (c) The rate or rates of monetary wages and fringe benefits paid to each employee;
  - (d) The rate or rates of fringe benefit payments made in lieu of those required to be provided to each employee;
  - (e) Total daily and weekly compensation paid to each employee;
  - (f) The daily and weekly hours worked by each employee;
  - (g) Apprenticeship and Training Agreements;
  - (h) Any deductions, rebates or refunds taken from each employee's total compensation and actual wages paid;
  - (i) Any payroll and other such records pertaining to the employment of employees upon a public work.
- (3) When apprentices and/or trainees are employed on a public works project, the records must clearly distinguish them from other employees.
- (4) When a contractor or subcontractor employs a worker on public works projects and non public works projects during the same work week and the worker is paid a rate of pay which is less than the prevailing wage rate when working on a non public works project, the contractor or subcontractor must separately record the hours worked on the public works projects and those hours worked elsewhere.
- (5) Contractors shall maintain records documenting that the appropriate fee was paid. Such records shall be maintained for a period of two years and shall include but are not limited to:
- (a) Contract documents showing the contract price;
  - (b) Change orders or other adjustments to the final contract price;
  - (c) Receipts showing amounts paid.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

## **839-016-0030**

### **Records Availability**

- (1) Every contractor and subcontractor performing work on a public works contract shall make available to representatives of the Wage and Hour Division records necessary to determine if the prevailing wage rate has been or is being paid to workers upon such public work and records showing contract prices and sums paid as fees to the bureau. Such records shall be made available to representatives of the Wage and Hour Division for inspection and transcription during normal business hours.
- (2) The contractor or subcontractor shall make the records referred to in section (1) of this rule available within 24 hours



of a request from a representative of the Wage and Hour Division or at such later date as may be specified by the division.

(3) When a prevailing wage rate claim or complaint has been filed with the Wage and Hour Division or when the division has otherwise received evidence indicating that a violation has occurred and upon a written request by a representative of the Division a public works contractor or subcontractor shall send a certified copy of such contractor's or subcontractor's payroll records to the Division within ten days of receiving such request. The Division's written request for such certified copies will indicate that a prevailing wage rate claim has been filed or that the division has received evidence indicating that a violation has occurred.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 3-1996, f. & cert. ef. 1-26-96

**Posting**

**839-016-0033**

**Posting Requirements**

- (1) Contractors shall post the prevailing wage rates applicable to the project in a conspicuous place at the site of work. The posting shall be easily accessible to employees working on the project.
- (2) Contractors may obtain a copy of the applicable prevailing wage rates, without cost, from: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232.
- (3) When a contractor or subcontractor provides for or contributes to a health and welfare plan or pension plan for employees who are working on a public works project, the contractor or subcontractor shall post a notice containing the following information:
  - (a) A description of the plan or plans;
  - (b) Information on how and where claims can be made; and
  - (c) Where to obtain more information.
- (4) The notice required to be posted in section (3) of this rule shall be posted in a conspicuous place at the site of work and shall be easily accessible to employees working on the project. The notice shall be posted in the same location as the prevailing wage rate pursuant to section (1) of this rule.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0034**

**Establishing a Work Schedule**

[Hist.: BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97]

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

## **Prevailing Rate of Wage**

### **839-016-0035**

#### **Payment of Prevailing Rate of Wage**

(1) Every contractor or subcontractor employing workers on a public works project shall pay to such workers no less than the prevailing rate of wage for each trade or occupation, as determined by the Commissioner, in which the workers are employed.

(2) Every person paid by a contractor or subcontractor in any manner for the person's labor in the construction, reconstruction, major renovation or painting of a public work is employed and must receive no less than the prevailing rate of wage, regardless of any contractual relationship alleged to exist. Thus, for example, if partners are themselves performing the duties of a worker, the partners must receive no less than the prevailing rate of wage for the hours they are so engaged.

(3) Persons employed on a public works project and who are spending more than 20% of their time during any workweek in performing duties which are manual or physical in nature as opposed to mental or managerial in nature are workers and must be paid the prevailing rate of wage. Mental or managerial duties include but are not limited to administrative, executive, professional, supervisory or clerical duties.

(4) Persons employed on a public contract for the manufacture or furnishing of materials, articles, supplies or equipment (whether or not a public agency acquires title to such materials, articles, supplies or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) are not workers required to be paid the prevailing rate of wage unless the employment of such persons is performed in connection with and at the site of public work.

(5) Persons employed on a public works project who are employed by a commercial supplier of goods or materials must be paid no less than the prevailing rate of wage when the work is performed at the "site of work" as that term is defined in OAR 839-016-0004(19) or when the work is performed in fabrication plants, batch plants, barrow pits, job headquarters, tool yards or other such places that are dedicated exclusively or nearly so to the public works project.

(6) Persons employed on a public works project by the construction contractor or construction subcontractor to transport materials or supplies to or from the public works project are required to be paid the prevailing wage rate for work performed in connection with the transportation of materials or supplies at the "site of work" as that term is defined in OAR 839-016-0004(19).

(7) Persons employed on a public contract for service work as opposed to construction work are not workers required to be paid the prevailing rate of wage.

(8) Every apprentice, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits as determined pursuant to ORS 279.348 to 279.363. Any worker listed on a payroll at an apprentice wage rate, who is not an apprentice as defined in these rules shall be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of apprentices employed exceeds the ratio permitted in the applicable standards, all apprentices so employed shall be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

(9) Every trainee, as defined in these rules, must be paid not less than the appropriate percentage of the applicable journeyman's wage rate and fringe benefits determined pursuant to ORS 279.348 to 279.363. Any worker listed on a payroll at a trainee wage rate, who is not a trainee as defined in these rules shall be paid not less than the applicable prevailing rate of wage for the classification of work actually performed. In addition, if the total number of trainees employed exceeds the ratio permitted in the applicable standards, all trainees so employed shall be paid not less than the applicable journeyman's prevailing wage rate for work actually performed.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.350

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1989(Temp), f. 10-2-89, cert. ef. 10-3-89; BL 5-1990, f. 3-30-90, cert. ef. 4-1-90; BL 8-1996, f. 8-26-96, cert. ef. 9-1-96; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97

## **Fringe Benefits**

### **839-016-0040**

#### **Payment of Fringe Benefits**

(1) Each contractor and subcontractor required to pay workers the prevailing rate of wage must pay no less than the hourly rate of pay and fringe benefits as determined by the Commissioner.

(2) The rate of pay for fringe benefits paid to apprentices and trainees shall be not less than such rate paid to the majority of such apprentices and trainees in the same trade or occupation as determined by the commissioner. If there is no majority in the same trade or occupation, as determined by the commissioner, apprentices and trainees shall be paid the full amount of the fringe benefits.

(3) The requirements of section (1) of this rule are met when the amount of the fringe benefit or benefits is paid to the worker, in cash, in lieu of a third party administering a fringe benefit or benefits program.

(4) When a contractor or subcontractor pays an hourly rate of pay which exceeds that which is determined by the Commissioner, the amount by which the rate is exceeded may be credited toward payment of the amount of fringe benefits determined by the Commissioner for the trade or occupation.

(5) When a contractor or subcontractor pays a rate for any one fringe benefit which exceeds that which is determined for the fringe benefit, the amount by which the rate is exceeded may be credited toward payment of the amount to be paid for all fringe benefits as determined by the Commissioner for the trade or occupation.

(6) When a contractor or subcontractor pays an amount for fringe benefits which exceeds that which is determined by the Commissioner the amount by which it exceeds the determination may be credited toward payment of the hourly rate of pay as determined by the Commissioner.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.350

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 1-1997(Temp), f. & cert. ef. 4-29-97; BL 4-1997, f. & cert. ef. 8-29-97

### **839-016-0045**

**Youth Apprentices**

Youth apprentices, as defined in ORS 344.745, shall not be employed on public works construction projects (Reference: ORS 344.750(5)).

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**Overtime Wages**

**839-016-0050**

**Overtime Wages Computations**

- (1) As used in this rule "work day" or "day" means a period of 24 consecutive hours beginning with the time the employee regularly starts work. The beginning of the work day may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of ORS 279.334. For purposes of overtime wages computation, each work day stands alone.
- (2) Contractors and subcontractors required by ORS 279.334 to pay overtime wages shall pay such wages as follows:
- (a) Workers who work in excess of eight hours/ day and who work on Saturdays and on holidays specified in ORS 279.334 must be paid time and one half the hourly rate of pay, excluding fringe benefits, for all hours so worked;
- (b) Where a worker performs work in one or more classifications which provide for one or more hourly rates of pay the worker must be paid, in addition to the straight time hourly earnings for all hours worked, a sum determined by multiplying one half the weighted average of the hourly rates by the number of hours worked in excess of eight per day and any work performed on Saturdays and on holidays specified in ORS 279.334;
- (c) When determining the hourly wage rate for overtime purposes, the amount paid for fringe benefits shall be excluded from the computations. Though the amount paid for fringe benefits must be paid for all hours worked, such amount is not included when determining the overtime rate. For example, a worker who earns \$15 per hour plus \$3 per hour in fringe benefits and works ten hours in a day is entitled to \$195 ((\$15/hr x 8 hours) + (\$22.50/hr x 2 hours) + (\$3/hr x 10 hours) = \$195) for that day.
- (3) Examples of computing overtime wages: See **Appendix 3**.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries Division.]

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.334

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**839-016-0054**

# **Exemption from Overtime Pay Requirements on Public Improvement Projects**

(1) As used in ORS 279.334(3) and in this rule, unless the context requires otherwise:

(a) "A collective bargaining agreement in effect" means a collective bargaining agreement which is recognized as being binding on all parties by the National Labor Relations Board; which is enforceable within the geographic area in which the public improvement is located; and, the terms of which extend to workers who are working on the public improvement project;

(b) "Labor organization" means any organization certified as such by the National Labor Relations Board.

(2) ORS 279.334(3) provides an exemption from the overtime pay requirements of ORS 279.334(1) and (2) under the following circumstances:

(a) The contract on which work is performed is a public improvement contract; and

(b) The contractor is a party to a collective bargaining agreement in effect with any labor organization.

(3) The exemption would not apply, for example, under the following circumstances:

(a) To workers employed on a public improvement who are not covered by the terms of a collective bargaining agreement;

(b) When the labor organization has no jurisdiction in the geographical area where work is being performed;

(c) Any other circumstance when the terms of the collective bargaining agreement is not enforceable for workers on public improvement projects.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 279.342

Hist.: BL 7-1992, f. & cert. ef. 6-11-92

## **Apprentices and Trainees**

**839-016-0060**

### **Apprentices**

(1) Apprentices will be permitted to work upon a public work at less than the prevailing rate of wage for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, (BAT), or with a State Apprenticeship Agency recognized by the BAT or if a person is employed in probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship Agency to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall conform to the apprenticeship standards filed with the Oregon Apprenticeship and Training Council for the particular craft or program in which the contractor's or subcontractor's apprentices are registered. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage and Hour Division written evidence of the

registration of the program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeymen hourly rates) prescribed in that program. The Commissioner has prepared a form which can be used by contractors or subcontractors in complying with this rule. It is attached to these rules as **Appendix 4**. Use of this form is optional.

(2) Notwithstanding section (1) of this rule, apprentices must be paid the full prevailing rate of wage when the program in which they are registered is located in a state contiguous to Oregon which does not recognize apprentices registered in a program approved by the Oregon State Apprenticeship and Training Council.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries Division.]

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.348

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 7-1994, f. & cert. ef. 11-16-94

**839-016-0065**

**Trainees**

Trainees will not be permitted to work upon a public work at less than the prevailing rate of wage for the work performed unless they are employed and individually registered in a program which has received prior approval of the U.S. Department of Labor, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage and Hour Division written evidence of the certification of the program, the registration of the trainees, and the ratios and wage rates prescribed in that program. The contractor or subcontractor may use the form appearing on **Appendix 4** of these rules in complying with this rule. In the event the Apprenticeship and Training Division withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable prevailing rate of wage for the work performed until an acceptable program is approved.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries Division.]

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84

**Enforcement**

**839-016-0080**

**Liability to Workers**

(1) Any contractor or subcontractor or any surety thereof who fails or refuses to pay at least the prevailing wages and fringe benefits as determined by the Commissioner or any overtime wages as required by ORS 279.334 is liable to the workers affected for all the unpaid prevailing wages, including fringe benefits, and unpaid overtime wages.

- (2) The contractor or subcontractor or surety thereof, referred to in section (1) of this rule, is also liable to all unpaid workers for an amount equal to the unpaid prevailing wages, including fringe benefits and unpaid overtime wages as liquidated damages.
- (3) Any public agency which fails to include the existing prevailing wage rates in the specifications for the public works contract or fails to include in the public works contract the provision that the prevailing wage must be paid to all workers employed upon the public work, shall be liable to the workers affected for any unpaid minimum wages.
- (4) As used in section (3) of this rule, "minimum wages" means the prevailing wage, including fringe benefits, as determined by the Commissioner. "Minimum wages" does not mean overtime wages required by ORS 279.334 nor liquidated damages referred to in section (2) of this rule.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.334

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1997(Temp), f. 7-31-97, cert. ef. 8-1-97

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**839-016-0085**

**Contract Ineligibility**

- (1) Under the following circumstances, the commissioner, in accordance with the Administrative Procedures Act, may determine that for a period not to exceed three years, a contractor, subcontractor or any firm, limited liability company, corporation, partnership or association in which the contractor or subcontractor has a financial interest is ineligible to receive any contract or subcontract for a public work:
- (a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed on public works as required by ORS 279.350;
  - (b) The subcontractor has failed to pay its employees the prevailing rate of wage required by ORS 279.350 and the contractor has paid the employees on the subcontractor's behalf;
  - (c) The contractor or subcontractor has intentionally failed or refused to post the prevailing wage rates as required by ORS 279.350(4) and these rules.
- (2) When the contractor or subcontractor is a corporation, the provisions of section (1) of this rule shall apply to any corporate officer or corporate agent who is responsible for the failure or refusal to pay or post the prevailing wage rates.
- (3) As used in section (2) of this rule, any corporate officer or corporate agent responsible for the failure to pay or post the prevailing wage rates or for the failure to pay to a subcontractor's employees amounts required by ORS 279.350 that are paid by the contractor on the subcontractor's behalf includes, but is not limited to the following individuals when the individuals knew or should have known the amount of the applicable prevailing wages or that such wages must be posted:
- (a) The corporate president;
  - (b) The corporate vice president;
  - (c) The corporate secretary;
  - (d) The corporate treasurer;

(e) Any other person acting as an agent of a corporate officer or the corporation.

(4) The Wage and Hour Division shall maintain a written list of the names of those contractors, subcontractors and other persons who are ineligible to receive public works contracts and subcontracts. The list shall contain the name of contractors, subcontractors and other persons, and the name of any firms, corporations, partnerships or associations in which the contractor, subcontractor or other persons have a financial interest. Except as provided in OAR 839-016-0095, such names will remain on the list for a period of three (3) years from the date such names were first published on the list.

(5) Before placing a name on the ineligible list referred to in section (3) of this rule, the commissioner shall serve a notice of intended action upon the contractor or subcontractor in the same manner as service of summons or by certified mail, return receipt requested.

(6) The Notice shall include:

(a) A reference to ORS 279.350;

(b) A short and concise statement of the matters which constitute intentional failure or refusal to pay or post the prevailing rate of wage;

(c) A statement of the party's right to request a contested case hearing and to be represented by counsel at such hearing, provided that any such request must be received by the commissioner in writing within 20 days of service of the notice;

(d) A statement that the party's name will be published on a list of persons ineligible to receive public works contracts or subcontracts, unless the party requests a contested case hearing as provided in subsection (4)(c) of this rule;

(e) A statement that failure to make written request to the commissioner for a contested case hearing within the time specified shall constitute a waiver of the right thereto; and

(f) A statement that if a hearing is requested, the contractor or subcontractor will be given information on procedures and rights as required by ORS 183.413(2).

(7) Upon the failure of the contractor or subcontractor to request a contested case hearing within the time specified, the commissioner or the commissioner's designee shall enter an order supporting the Bureau's action.

(8) If a contractor or subcontractor makes a timely request for a contested case hearing a hearing shall be held in accordance with the Attorney General's Model Rules of Procedure Under the Administrative Procedure Act by the commissioner or the commissioner's designee.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

## **839-016-0090**

### **List of Ineligibles**

(1) The name of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor or subcontractor has a financial interest whom the Commissioner has determined to be ineligible to receive public works contracts shall be published on a list of persons ineligible to receive such contracts or subcontracts.



- (2) The list of persons ineligible to receive contracts or subcontracts on public works shall be known as the List of Ineligibles. In addition to names referred to in section (1) of this rule the list shall contain the date the name was placed on the list and the period of time for which they are ineligible.
- (3) The List of Ineligibles shall be published quarterly and amended as needed at any time. Such list shall be furnished to the public upon request, and made available to public contracting agencies as published or amended.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.361

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84

**839-016-0095**

**Removal of Names From List**

- (1) The names of the contractor, subcontractor or other persons and the names of any firm, corporation, partnership or association in which the contractor, subcontractor or other persons have a financial interest shall remain on the list for a period of three (3) years from the date of publication of such name on the list.
- (2) The names referred to in section (1) of this rule shall be removed from the list after three (3) years.
- (3) The Commissioner may, for good cause shown, direct the removal of a name from the list before the expiration of three (3) years. If the Commissioner determines good cause has been shown, the Commissioner shall issue an order directing the removal of such name or names.
- (4) Contractors, subcontractors or other persons, or any firm, corporation, partnership or association in which the contractor, subcontractor or other persons have a financial interest who desire to be removed from the list before the expiration of three (3) years must show good cause for such removal. Such persons may petition the Commissioner at any time during the period of ineligibility.
- (5) In reviewing such petitions, the Commissioner shall consider the following matters:
- (a) The past history of the petitioner in taking all necessary measures to prevent or correct violations of statutes or rules;
  - (b) Prior violations, if any, of statutes or rules;
  - (c) Magnitude and seriousness of the violation;
  - (d) Other matters which indicate to the Commissioner that the petitioner is not likely to violate ORS 279.348 to 279.363 and these rules in the future.
- (6) The Commissioner shall grant or deny the petition.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.361

Hist.: BL 14-1982, f. 10-19-82, ef. 10-20-82; BL 4-1984, f. & ef. 3-13-84

**Exemptions**

**839-016-0100**

**Exemptions**

(1) All public works contracts, regardless of funding sources, awarded by a public agency are regulated under ORS 279.348 to 279.380 except as follows:

- (a) Projects for which the total sum of the contract price does not exceed \$25,000;
- (b) Projects which are regulated under the Davis-Bacon Act (**40 U.S.C. 276a**);
- (c) Contracts of a People's Utility District which are regulated under ORS 261.345.

(2) As used in subsection (1)(a) of this rule, the contract price has the same meaning as that defined in OAR 839-016-0200(5)(a).

(3) As used in subsection (1)(b) of this rule, projects regulated under the Davis-Bacon Act do not include projects subject to that Act but for any reason are not regulated under it. (For example, contracts subject to the Davis-Bacon Act and from which the prevailing wage rates, as determined by the U.S. Secretary of Labor, have been omitted are not regulated under that Act.)

(4) The provisions of ORS 279.350 and these rules that regulate payment of the prevailing rate of wage do not apply to inmates of the Oregon Department of Corrections assigned to a work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 4-1984, f. & ef. 3-13-84; BL 3-1996, f. & cert. ef. 1-26-96

**Installation of Art on Public Works Projects and the Payment  
of the Prevailing Rate of Wage**

**839-016-0150**

**Definitions**

(1) As used in this rule and OAR 839-016-0155, unless the context requires otherwise, the terms used herein shall have the same meaning as that given them in OAR 839-016-0004.

(2) Notwithstanding the meaning given it in OAR 839-016-0004(9), the term "worker" does not include an individual whose primary duty consists of the performance of work that is original and creative in character in a recognized field of artistic endeavor (as contrasted to work which can be produced by an individual endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the individual.

- (3) Notwithstanding the meaning of the terms "construction", "reconstruction" and "major renovation" which are given in OAR 839-016-0004(19) and (20), such terms do not include the installation of applied art.
- (4) The installation of applied art, includes, but is not limited to the installation of pictures, (including paintings, etchings, drawings and photographs), all hangings, pieces of sculpture, statues and other artistic pieces which are independent unto themselves and are not necessary to the structural integrity of the public work.
- (5) Installation work necessary to the structural integrity of a public work includes, but is not limited to the installation of windows, ceiling tiles, brick and concrete masonry, sheet metal or other facia materials, siding of any kind, lights, support beams and any item necessary to the construction of the actual public work itself, or to the health and safety of persons who use or will use the public work. The painting of a public work, or any of its parts is considered necessary to the structural integrity of the public work.
- (6) Work considered to be "de minimus" means work not regulated under ORS 279.348 to 279.363 or these rules.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.363

Hist.: BL 8-1984, f. & ef. 6-21-84

**839-016-0155**

**Payment of Prevailing Rate of Wage for the Installation of Art on Public Works Projects**

- (1) Workers engaged in the installation of art necessary to the structural integrity of the public work, as defined in these rules, must be paid no less than the applicable prevailing rate of wage as determined by the Commissioner.
- (2) Workers engaged in the installation of applied art, as defined in these rules, are not required to be paid the prevailing rate of wage when such work is the only work in which the worker is engaged while employed on the public work project. Such work is considered de minimus as defined in these rules.
- (3) Any artist who meets the definition of an individual in OAR 839-016-0150(2) is not required to be paid the prevailing rate of wage, even when the artist is engaged in the installation of art necessary to the structural integrity of the public work when the art is of the artist's own creation.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.342

Hist.: BL 8-1984, f. & ef. 6-21-84

**Fees on Public Works Contracts**

**839-016-0200**

**Fees to be Paid by Contractor**

- (1) Every contractor awarded a contract for a public work which is regulated under the Prevailing Wage Rate Law ORS 279.348 to 279.380 shall pay a fee.

(2) The amount of the fee shall be one tenth of one percent (.001) of the contract price. However, the fee shall be no less than \$100 nor more than \$5,000 regardless of the contract price.

(3) The fee is payable to the Bureau of Labor and Industries and shall be mailed or delivered to the bureau at the following address: Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #32, Portland, OR 97232.

(4) The fee shall be paid no later than 10 days following receipt by the contractor of the first progress payment on the contract or 60 days after work on the project has begun, whichever date is earlier.

(5) In order to assist contractors in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form is available, on request, from the Prevailing Wage Rate Unit at the address contained in section (3) of this rule.

(6) As used in this rule:

(a) "Contract price" means the dollar amount of the contract on the date it was awarded to the contractor and the dollar amount of any subsequent change orders or other adjustments.

(b) "Work on the project" shall mean work performed after the date the contract was awarded and for which the contractor is paid as part of the contract price.

(c) The "date work on the project has begun" shall be the date the contractor actually starts work on the project or, if the contractor cannot determine the date the contractor actually started working on the project, the date the contracting agency establishes as the date work actually started on the project or, if neither the contractor nor the contracting agency can determine the date the contractor actually started work on the project, the date the contracting agency authorized the contractor to begin work on the project.

(d) "Progress payment" means a partial payment to the contractor by the contracting agency for work performed on the contract.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

## 839-016-0210

### Adjustment of Fees

(1) Within 30 days of the final progress payment to the contractor by the contracting agency after completion of the contract, the contractor shall determine the final contract price. The contractor shall consider all change orders or other adjustments to the contract price in making the determination.

(2) The contractor shall calculate the fee in accordance with OAR 839-016-0200(2) and shall credit the amount paid pursuant to OAR 839-016-0200(4). The difference, if any, shall be determined as follows:

(a) In the case of a reduction of more than \$100 in the amount of the fee, the contractor may submit a request to the bureau for a refund of the difference and the bureau shall pay a refund to the contractor or subcontractor;

(b) In the case of an increase of more than \$100 in the amount of the fee, the contractor shall pay the difference to the bureau.

(3) Requests for refunds and additional payments shall be submitted with sufficient documentation to show how the

amount to be refunded or to be paid was calculated. All such requests or payments shall be made to the bureau at the address specified in OAR 839-016-0200(3) within 30 days of the date the final progress payment was made to the contractor by the contracting agency after completion of the contract.

(4) In order to assist contractors in the proper calculation of the fee, the bureau has prepared a form for this purpose. The form is available, on request, from the Prevailing Wage Unit at the address specified in OAR 839-016-0200(3).

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0220**

**Fees for Contract Without Specific Award Amounts**

- (1) When the project for a public work is anticipated to equal or exceed \$25,000 but the contract is awarded without stating any specific amount, the contract price for purposes of calculating the fee shall be based on the amount the public agency anticipates to be the guaranteed maximum amount of the project.
- (2) When the contract is awarded without stating any specific amount, the fee shall be calculated on the guaranteed maximum amount referred to in section (1) of this rule and the fee is payable pursuant to OAR 839-016-0200.
- (3) When the contract is completed, adjustments in the fees shall be calculated and paid or a refund may be requested as provided in OAR 839-016-0210.
- (4) When the agency has not determined the guaranteed maximum amount, the agency shall provide to the contractor with a good faith estimate of the contract price. The fee shall be calculated on this estimated amount.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0230**

**Special Circumstances/No General Contractors**

- (1) While the general contractor is normally the party that will pay the required fee, there are circumstances when this may not be the case. When the public contracting agency chooses to act as its own general contractor or when the agency contracts with another to act as the construction manager of a public works project, several parties may be responsible for paying a fee.
- (2) The required fee must be paid by the contractor who is awarded the public works contract (See ORS 279.375). Therefore, when a contracting agency acts as its own general contractor and enters into one or several contracts in connection with a public works project of \$25,000 or more, each contractor shall be required to pay the fee in connection with the contract awarded to the contractor. The fee is required on all contracts, regardless of the contract price of any individual contract, so long as the combined price of all contracts awarded on the project is \$25,000 or more.
- (3) Section (2) of this rule is also applicable to the circumstance where the contracting agency contracts with a

contractor to act as the general manager of a public works project. The contract for general manager services is a public works contract for purposes of these rules and a fee is required just as any other public works contract, since the contract would not have been entered into but for the public works project.

(4) When a contracting agency enters into an agreement for construction management services or chooses to act as its own general contractor or construction manager, the contract price for purposes of determining whether the project is regulated under the law shall be the sum of all contracts associated with the project or, if the actual sums are not known at the time work begins, the contract price shall be the guaranteed maximum amount for the project or the agency's good faith estimate of the contract price of the project if there is no guaranteed maximum amount. Under these circumstances, when the guaranteed maximum amount of the project or the agency's estimate of the price of the project meets or exceeds \$25,000, each contractor that enters into a contract with the agency shall be responsible for paying a fee pursuant to OAR 839-016-0200.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0240**

**Special Circumstances/Effective Date**

- (1) Contractors are required to pay a fee on all applicable contracts awarded on or after September 9, 1995. Contracts awarded before that date are not subject to the fee.
- (2) When work on a public works project of \$25,000 or more began prior to the effective date and contracts are awarded in connection with the project after the effective date, only those contracts awarded after the effective date are subject to the required fee.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**Actions That Circumvent Payment of Prevailing Wages Prohibited**

**839-016-0300**

**Generally**

No person shall take any action which circumvents the payment of the prevailing wage rate to workers on public works projects.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0310**

**Dividing Projects Prohibited**

(1) Public contracting agencies shall not divide a public works project into more than one contract for the purpose of avoiding compliance with ORS 279.348 to 279.380.

(2) When making a determination of whether the public agency divided a contract to avoid compliance with ORS 279.348 to 279.380, the commissioner shall consider the facts and circumstances in any given situation including, but not limited to, the following matters:

- (a) The physical separation of project structures;
- (b) Whether a single public works project includes several types of improvements or structures;
- (c) The anticipated outcome of the particular improvements or structures the agency plans to fund;
- (d) Whether the structures or improvements are similar to one another and combine to form a single, logical entity having an overall purpose or function;
- (e) Whether the work on the project is performed in one time period or in several phases as components of a larger entity;
- (f) Whether a contractor or subcontractor and their employees are the same or substantially the same throughout the particular project;
- (g) The manner in which the public contracting agency and the contractors administer and implement the project;.
- (h) Other relevant matters as may arise in any particular case;

(3) When the commissioner determines that a public contracting agency has divided a public works project for the purpose of avoiding compliance with ORS 279.348 to 279.380, the commissioner shall issue an order compelling compliance with ORS 279.348 to 279.380 The order shall be written and shall offer the public contracting agency the opportunity to contest the order pursuant to OAR 839-016-0002.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0320**

**Payment of Prevailing Wage by Persons Other Than Contractors or Subcontractors Prohibited**

(1) Except as provided herein, no person, other than the contractor or subcontractor, shall pay or contribute any portion of the prevailing rate of wage specified in the contract to workers employed on the public works contract.

(2) Section (1) of this rule does not apply to payments to workers who are enrolled in government-subsidized training or retraining programs.

(3) For purposes of this rule, a person pays or contributes to the payment of the prevailing rate of wage when a

contractor or subcontractor receives monies pursuant to a program, plan or other agreement that includes a provision that contributions by members of a labor organization of a part of their wages will be made to the labor organization for the purpose of paying contractors or subcontractors the difference in the wage rate negotiated under the collective bargaining agreement and the wage rate used by the contractor or subcontractor in obtaining a contract. However, a person does not pay or contribute to the payment of the prevailing rate of wage when the contractor or subcontractor receives monies pursuant to such program plan or agreement if the collectively bargained wage rate exceeded the prevailing rate of wage in effect at the time the contractor or subcontractor made a bid on a contract.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0330**

**Wage Averaging Prohibited**

- (1) No contractor or subcontractor shall reduce a worker's regular rate of pay for work on projects not subject to the Prevailing Wage Rate Law (ORS 279.348 to 279.380) when the reduction in pay has the effect of the worker not receiving the prevailing rate of wage for work performed on the public works project.
- (2) As used in this rule, "regular rate" has the same meaning as that defined in OAR 839-020-0030(2)(b).
- (3) When making a determination of whether a contractor or subcontractor has reduced a worker's regular rate in violation of section (1) of this rule, the bureau shall consider:
  - (a) The timing of the wage rate reduction;
  - (b) Whether the wage rate reduction was made pursuant to an established plan;
  - (c) Whether the wage rate reduction is applied equally to all workers in similar job classifications;
  - (d) Whether the wage rate reductions are applied to workers employed on public works projects but not to workers employed only on projects not subject to the Prevailing Wage Rate Law (ORS 279.348 to 279.380);
  - (e) Other considerations as the facts and circumstances of a particular matter may reveal.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0340**

**Other Circumventions**

- (1) A contracting agency circumvents the payment of the prevailing rate of wage when it knowingly or intentionally:
  - (a) Fails or refuses to include a provision stating the existing prevailing rate of wage in the contract specifications in violation of ORS 279.352;



- (b) Fails or refuses to include a provision in the contract that workers on the contract shall be paid no less than the specified minimum hourly rate of wage in violation of ORS 279.352;
  - (c) Divides a project for the purpose of avoiding compliance with ORS 279.348 to 279.380 in violation of ORS 279.357(2).
  - (d) Awards a contract to a contractor whose name appears on the list of ineligibles maintained pursuant to ORS 279.361.
- (2) The "specified minimum hourly rate of wage" as used in subsection (1)(b) of this rule means the applicable prevailing rate of wage.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**Civil Penalties For Violation of Prevailing Wage Rates on Public Works Matters**

**839-016-0500**

**Definitions**

As used in OAR 839-016-0500 to 839-016-0540, a person acts knowingly when the person has actual knowledge of a thing to be done or omitted or should have known the thing to be done or omitted. A person should have known the thing to be done or omitted if the person has knowledge of facts or circumstances that would place the person on reasonably diligent inquiry. A person acts knowingly if the person has the means to be informed but elects not to do so. For purposes of the rule, the contractor, subcontractor and contracting agency are presumed to know the circumstances of the public works construction project.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0510**

**Violations Separate and Distinct**

Each violation is separate and distinct. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0520**

**Criteria to Determine Civil Penalty**

- (1) The commissioner shall consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed against a contractor, subcontractor or contracting agency and shall cite those the commissioner finds to be applicable:
- (a) The actions of the contractor, subcontractor or contracting agency in responding to previous violations of statutes and rules;
  - (b) Prior violations, if any, of statutes and rules;
  - (c) The opportunity and degree of difficulty to comply;
  - (d) The magnitude and seriousness of the violation;
  - (e) Whether the contractor, subcontractor or contracting agency knew or should have known of the violation.
- (2) It shall be the responsibility of the contractor, subcontractor or contracting agency to provide the commissioner with evidence of any mitigating circumstances set out in section (1) of this rule.
- (3) In arriving at the actual amount of the civil penalty, the commissioner shall consider the amount of the underpayment of wages, if any, in violation of any statute or rule.
- (4) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the contractor, subcontractor or contracting agency for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

**839-016-0530**

**Violations for Which a Civil Penalty May be Assessed**

- (1) The commissioner may assess a civil penalty for each violation of any provision of the Prevailing Wage Rate Law (ORS 279.348 to 279.380) and for each violation of any provision of the administrative rules adopted under the Prevailing Wage Rate Law.
- (2) Civil penalties may be assessed against any contractor, subcontractor or contracting agency regulated under the Prevailing Wage Rate Law and are in addition to, not in lieu of, any other penalty prescribed by law.
- (3) The commissioner may assess a civil penalty against a contractor or subcontractor for any of the following violations:
- (a) Failure to pay the prevailing rate of wage in violation of ORS 279.350;
  - (b) Failure to post the applicable prevailing wage rates in violation of ORS 279.350(4);
  - (c) Failure to post the notice describing the health and welfare or pension plans in violation of ORS 279.350(5);
  - (d) Failure to file certified statements in violation of ORS 279.354;

- (e) Filing inaccurate or incomplete certified statements in violation of ORS 279.354;
  - (f) Paying the prevailing rate of wage in violation of ORS 279.350(6);
  - (g) Reducing an employee's pay in violation of ORS 279.350(7);
  - (h) Taking action to circumvent the payment of the prevailing wage, other than subsections (e) and (f) of this section, in violation of ORS 279.350(7);
  - (i) Failure to submit reports and returns in violation of ORS 279.359(2);
  - (j) Failure to certify the accuracy of reports and returns in violation of ORS 279.359(2);
  - (k) Failure to pay the fee required by ORS 279.375.
- (4) The commissioner may assess a civil penalty against a public contracting agency for any of the following violations:
- (a) Failure to include a contract provision stating that workers shall be paid the prevailing rate of wage in violation of ORS 279.352(1);
  - (b) Failure to include a contract provision stating that a fee is to be paid to the commissioner in violation of ORS 279.352(2);
  - (c) Failure to include in the contract specifications a provision stating the existing prevailing wage rate in violation of ORS 279.352(1);
  - (d) Failure to include in the contract specifications a provision stating that a fee is required to be paid to the commissioner in violation of ORS 279.352(2);
  - (e) Failure to notify the commissioner when a contract is awarded in violation of ORS 279.363;
  - (f) Dividing a public works contract in violation of ORS 279.357(2).

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

## **839-016-0540**

### **Schedule of Civil Penalties**

- (1) The civil penalty for any one violation shall not exceed \$5,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.
- (2) For purposes of this rule "repeated violations" means violations of a provision of law or rule which has been violated on more than one project within two years of the date of the most recent violation.
- (3) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for a violation of ORS 279.350 regarding the payment of the prevailing rate of wage, the minimum civil penalty shall be calculated as follows:
  - (a) An equal amount of the unpaid wages or \$1,000, whichever is less, for the first violation;

- (b) Two times the amount of the unpaid wages or \$3,000, whichever is less, for the first repeated violation;
  - (c) Three times the amount of the unpaid wages or \$5,000, whichever is less, for second and subsequent repeated violations.
- (4) Notwithstanding any other section of this rule, when the commissioner determines to assess a civil penalty for violations of ORS 279.375, OAR 839-016-0200 or 839-016-0220 regarding fees to be paid by the contractor, the minimum civil penalty to be assessed shall be calculated as follows:
- (a) An equal amount of the unpaid fee or \$1,000, whichever is greater, for the first violation;
  - (b) Two times the amount of the unpaid fee or \$3,000, whichever is greater, for the second violation;
  - (c) Three times the amount of the unpaid fee or \$5,000, whichever is greater, for the third and subsequent violations.
- (5) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to OAR 839-016-0530.
- (6) The civil penalties set out in this rule shall be in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS Ch. 279 & 651

Stats. Implemented: ORS 279.348 - 279.380

Hist.: BL 3-1996, f. & cert. ef. 1-26-96

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 17**

**PRIVATE EMPLOYMENT AGENCY MATTERS**

[ED. NOTE: Previous rules 839-017-0003 through 839-017-440 relating to Boiler and Pressure Vessel Safety rules were statutorily transferred to the Department of Commerce by Chapter 753, Oregon Laws 1971.]

**Interpretive Rules and Policies for Operating Employment Agencies**

**839-017-0001**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure under the Administrative Procedure Act, effective September 9, 1995, are hereby adopted by reference as rules for private employment agency matters except that the Model Rules of Procedure shall not apply to contested cases conducted pursuant to ORS 658.005 to 658.245. The rules for contested case proceedings are set fourth in OAR 839-030-0020 to 839-030-0200. Any matters not addressed in OAR 839-030-0020 to 839-030-0200 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 131, f. 10-20-72, ef. 10-1-72; BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 9-1980, f. & ef. 9-5-80; BL 9-1986, f. & ef. 9-2-86; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0004**

**Definitions**

As used in ORS 658.005 to 658.245 and in these rules unless the context requires otherwise:

(1) "Advertising" means any material or means used by the employment agency for solicitation or promotion of business. This includes, but is not limited to, business cards, notices or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It may also mean referral cards, invoices, letterheads, or other forms if such forms are used in combination with solicitation and promotion of business.

(2) "Applicant for Employment" means an individual who is seeking or who has obtained employment through the services of an employment agency.

(3) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.

(4) "Charge for Services" means any money or other consideration paid or promised to be paid by an applicant for employment for services rendered by an employment agency.

(5) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or the Commissioner's authorized deputies and officers.

(6) "Engaged in Procuring for a Fee, Employment for Others and Employees for Employers" as used in ORS 658.005(3) means all actions of an employment agency leading up to and including the placing of job applicants in employment with others, provided a charge for services is paid to the employment agency by an applicant. Such actions include but are not limited to:

(a) Assisting an individual in completing the agency's application form or other documents detailing the individual's work experience and general qualifications for employment;

(b) Interviewing an individual in connection with specific job openings or in connection with the agency's general practice and procedure for determining the experience and qualifications of an applicant for employment;

(c) Referring individuals to prospective employers pursuant to job orders obtained from said employers;

(d) Soliciting and obtaining job orders from employers;

(e) Recruiting individuals to fill job orders obtained from employers;

(f) Advertising for individuals to fill job orders obtained from employers;

(g) Other activities that cause, acquire, gain, get or bring about the placement of individuals in employment.

(7) "Fee Paid Position" means a position in which under no circumstances is the applicant for employment who is identified, appraised, referred, or recommended charged a deposit, retainer, fee or any other charge for services directly or indirectly at any time in connection with such position.

(8) "Violation" means a transgression of any statute, rule or order, or any part thereof and includes both acts and omissions.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 12-1978, f. & ef. 8-16-78; BL 10-1987(Temp), f. 9-30-87, ef. 10-1-87; BL 8-1988 f. & cert. ef. 5-16-88, Renumbered from 839-017-0176; BL 6-1997, f. & cert. ef. 11-13-97

## Procedural Rules

**839-017-0005**

**Notice of Proposed Rule**

Prior to the adoption, amendment or repeal of any rule relating to private employment agency matters, the Wage and Hour Division of the Bureau of Labor and Industries shall give notice of intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) By mailing a copy of the notice of intended action to persons on the Wage and Hour Division's mailing list for private employment agency matters established pursuant to ORS 183.335 at least 28 days prior to the effective date.
- (3) By mailing a copy of the notice of intended action to:
  - (a) Associated Press;
  - (b) Private Employment Agencies;
  - (c) Oregon Association of Personnel Consultants.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 10-1980, f. & ef. 9-19-80; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**Contracts Between Employment Agencies and Applicants for Employment**

**839-017-0011**

**Contents of Contract**

- (1) All employment agencies making a charge for service to the applicant for employment, either directly or indirectly, must have a written contract with the applicant for employment which contains the requirements set out in ORS 658.005 to 658.245.
- (2) The contract shall contain a schedule of maximum service charges. When the agency places applicants for employment in permanent employment (as defined in ORS 658.185(1)(a)), temporary employment (as defined in ORS 658.185(1)(b)) or in employment compensated on a commission basis, the schedule shall contain separate sections pertaining to the types of employment in which applicants for employment are placed. However, separate sections are required only when the agency makes placements in more than one type of employment.
- (3) See **Appendix 1** for an example of a contract which complies with this rule.

[ED. NOTE: The Appendices referenced in this rule are not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries Division.]

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-

77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0012**

**Additional Contract Requirements**

In addition to the requirements of the statutes included in OAR 839-017-0011, the following contract clauses must be in all contracts between the employment agency and an applicant for employment who may be responsible for the agency's charge for services either directly or indirectly:

- (1) "A refund, when due, shall be made within ten (10) days after notice of termination of the applicant's employment has been received by the agency."
- (2) "If my employment lasts less than ninety (90) calendar days,\_\_\_\_\_ (agency) \_\_\_\_\_ shall reduce the service charge so that it will not exceed one-ninetieth of the charge for permanent employment for each consecutive calendar day during the period I am employed or compensated as though employed."
- (3) "I understand I shall be responsible for only one full fee for any single placement whether or not employment is secured through the assistance of more than one employment agency."

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165 & 658.185

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0013**

**Requirements When Compensation Based on Commission**

In addition to the requirements of OAR 839-017-0011 and 839-017-0012, the following clauses are required to be in all contracts between agencies and applicants for employment when placements are made or to be made on commission positions:

- (1) "Should proof be presented after six months and/or twelve months of employment that the estimates of total gross earnings were inaccurate, \_\_\_\_\_ (agency) \_\_\_\_\_ shall refund to the applicant any excess charges paid by him, or the applicant shall pay to \_\_\_\_\_ (agency) \_\_\_\_\_ any deficiency in charges."
- (2) "If the applicant's compensation is based on commission and his employment is terminated prior to the conclusion of the first twelve months of employment, the actual total gross earnings of the applicant for the period of employment shall be projected to twelve months on a pro-rata basis as though the applicant had been employed for the entire period of twelve months, and a computation shall be made thereon. The adjusted charge for services by the applicant shall be predicated upon such computation."

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.185

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77



**839-017-0025**

**Clauses or Statements Not Required, May Be Included**

The following clauses or statements are not required to be in any contract between the employment agency and the applicant for employment who may be responsible for the agency's charge for service directly or indirectly, but so long as consistent with other required or permissible clauses, may be included in the contract between the employment agency and the applicant for employment:

- (1) "In no instance in which the employment secured is subsequently terminated shall the charge for services be greater than the total gross earnings of the applicant."
- (2) "One month equals 1/12th of a year or 4-1/3 weeks."
- (3) "These service charges often may be deducted for income tax purposes."
- (4) "Payment of any refund which shall be due shall be made to the applicant's lender, if any, to the extent of the then unpaid balance of such loan to minimize the liability of \_\_\_\_\_ (agency) \_\_\_\_\_ for the interest, fees, or other charges incurred by the applicant."
- (5) "I will keep the agency informed about the results of all arranged interviews, and will advise the agency at once upon acceptance of employment, or if employment which has been accepted is terminated for any reason."
- (6) "I hereby give permission for references to be checked for purposes of employment, and understand that upon request \_\_\_\_\_ (agency) \_\_\_\_\_ will divulge the content of same to me."
- (7) "If the applicant fails to perform this contract, or to pay the agency's service charge provided herein, then the applicant agrees to pay \_\_\_\_\_ (agency) \_\_\_\_\_ reasonable attorney's fees and other costs of collection as determined by a court."
- (8) "There shall be no oral agreements or oral additions to this contract. Any further terms, conditions, or understandings shall be in writing."

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.168(4)

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156, f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77

**839-017-0030**

**Refund to Applicant**

- (1) Whenever an agency receives notice from any source that an applicant for employment has terminated employment within the time which requires a refund of a portion or all of the agency's charge for services, the agency shall refund within ten days of such notice, by cash or its equivalent, and not by goods or services, all sums due as a refund to the applicant.
- (2) Those applicants for employment whose compensation is based upon commission employment and who have presented proof of earnings at the end of six and/or twelve months which may require a refund of a portion of the agency's charges, shall receive such refund from the agency within ten days of such request.
- (3) Contracts or agreements shall not contain statements or understandings concerning job replacement or other goods and services contrary to this rule.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.185

Hist.: BL 149, f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0031**

**Oral Agreements or Additions to Contracts Prohibited**

There shall be no oral agreements or oral additions to any contract between the employment agency and the applicant for employment. Any terms, conditions, or understandings between the employment agency and the applicant for employment shall be in writing.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.168

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77

**839-017-0032**

**Record of Contracts**

All contracts shall be in numerical order and registered in a log. The log will contain the contract number, the date, and the name of the applicant as it appears in some uniform place in the contract. A separate set of numbers may be used for "fee" and "fee paid" contracts.

Stat. Auth.: ORS 658.210 & 658.078

Stats. Implemented: ORS 658.078

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77

**839-017-0040**

**Fee Paid Positions**

- (1) When an employment agency deals in both fee paid positions and in positions for which the applicant for employment pays the charge for service, and when the agency intends to assist individuals exclusively with referrals and placements in fee paid positions, the agency must enter into a written agreement with each individual applicant for employment. This agreement may be similar to that as provided in Appendix 2. If the applicant subsequently desires referrals to applicant fee paid positions, the agency must enter into a new contract in conformity with OAR 839-017-0011 to 839-017-0045 before any such referral is made.
- (2) Written disclosure to the applicant for employment that is provided for in section (1) of this rule shall not be required when the position for which the applicant for employment is applying or being recruited will pay the applicant for employment no less than \$30,000 per year on a salary basis.

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0045**

**Addendum to Contract to Provide Specific Terms for Payment**

After an applicant for employment has accepted employment with an employer, but before actually starting work, the applicant and the employment agency may change the terms agreed to in their original contract or enter into an addendum to the original contract between themselves which provides for specific terms of payment after the applicant actually starts work. See **Appendix 3** for a sample form which complies with this rule.

[ED. NOTE: The Appendices referenced in this rule are not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries Division.]

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.168(4)

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77

**Job Order and Job Referral Document Rules**

**839-017-0051**

**Definitions**

(1) "Open" or "Standing" job orders are for categories of jobs for which an employer usually has two or more open positions at any one given time although on occasion the employer is merely interested in receiving applications and does not hire immediately all qualified applicants. In addition, these are types of positions for which an employer has a steady and continuous need of qualified employees.

**EXAMPLE:** A job order from the central hiring office of a large bank to refer any qualified applicants the agency may have for teller openings that come up regularly and habitually.

(2) An "Exploratory Interview" or "Exploratory Job Order" means a bona fide order for employment valid for one specific applicant only.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 149(Temp), f 10-30-73, ef. 11-1-73; BL 156, f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77

## Job Referral Documents

### 839-017-0052

#### What Constitutes a Bona Fide Job Order

- (1) A bona fide job order is valid for referral of any qualified applicant for employment until it is filled or canceled by the employer and may serve as the basis for agency advertising.
- (2) A bona fide job order may be considered to have been given by an employer to an employment agency when the following conditions are met:
- (a) The employer or the employer's agent, in person, by telephone, telegram, facsimile or other electronic media, or in writing, registers a request that the agency recruit or gives permission to the agency to refer applicants for employment who meet stated job specifications;
- (b) The agency contacts the employer after every thirty days to insure that the position is still vacant prior to any additional advertising or referrals.
- (3) "Open" or "Standing" job orders are to be renewed prior to each interview with an applicant for employment and at the end of every thirty days in order for them to be current and valid. Open or Standing job orders may not be advertised in any way. Open or Standing job orders must be for specific job categories as distinguished from a specific job. Open or Standing job orders must fulfill all informational content requirements of "Regular" job orders. Open/Standing job orders will contain the title "Open" or "Standing" job order.
- (4) An "Exploratory Interview" or "Exploratory Job Order" is not valid for advertising. Prior to any interview, an "exploratory" job order must be written up by the agency containing as much available job order information as can be supplied by the employer. A job referral document shall be supplied to the applicant, containing all available job order information, and the following underlined statement: "This is an exploratory interview. There is no definite position open with this employer at this time. However, this interview has been agreed to by the employer." Employment agencies shall not obtain exploratory job orders/interviews in situations where they either have a "regular" job order, or access to one.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

### 839-017-0053

#### Exploratory Job Order/Interview Considered to Be Given

An Exploratory Job Order/Interview shall be considered to have been given if, as the result of the agency's bringing the qualifications of an applicant for employment to the attention of an employer, the employer's interest in exploring the possibility of employing the applicant is evidenced by the employer's agreement to interview the applicant.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-

77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0054**

**Identification by Agency to Employer/Accepting a Fee Paid Order**

- (1) In the process of obtaining a job order, the employment agency shall identify itself as an employment agency to employers in an introductory statement in all cases unless identification of the specific agency representative to the specific employer representative has been previously established. Where the employer is to pay the fee, the agency must obtain the employer's agreement from the personnel manager or other authorized agent.
- (2) When accepting a job order for a fee paid position, the agency shall make a reasonable effort to inform the employer that the employer cannot collect the employment agency fee from the applicant for employment.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156, f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0060**

**Information Required to Be Contained in a Job Order**

- (1) Except as provided in rule 839-017-0052(3), information that is required to be contained in all job orders includes:
- (a) Normal hours of work per day. (State exceptions);
  - (b) Weekend or night work if indicated (total number and which days);
  - (c) Whether employer fee paid or applicant fee paid position;
  - (d) The job title(s)/kind of work. A list of special skills required to perform adequately on the job together with the minimum performance level required. "Required" means only those skills which will be regularly and habitually required to gain the job, perform at a minimum level on the job and to retain the job. This section shall not apply to any job with a starting salary of \$30,000 per year or more;
  - (e) A list of established fringe benefits (considerations of privilege) such as holidays, sick leave, car allowances, expense allowances, room and board, medical and hospital insurance, vacations together with whether or not paid by the employer as indicated by the employer;
  - (f) The number of the job order;
  - (g) The date received;
  - (h) The salary, hourly pay rate, or salary or hourly pay range for the position. At least a minimum salary or wage must be specified in terms of dollars and cents. If earnings are to be on commission, a statement as to whether or not any guaranteed salary or draws are involved;
  - (i) The name and address of the company placing the job order, and the location of work;
  - (j) The name of the individual who placed the job order for the employer and the name of the individual who accepted

the order for the agency;

(k) Whether union membership is required and indications of any labor trouble existing.

(2) When a job order is filled, the true name of the individual who obtained the job as appears in the agency's records, the date the job was filled, and the fee charged to the applicant for employment will be appended to the job order.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 9-1980, f. & ef. 9-5-80; BL 8-1988 f. & cert. ef. 5-16-88

**Job Referral Document Rules**

**839-017-0070**

**Job Referral Document**

(1) The job referral document shall be assigned the same number as that assigned to the job order and shall include:

(a) The name, address, and telephone number of the employment agency;

(b) The date of issuing the job referral document;

(c) The name of the applicant for employment, the name and address of the person to whom the applicant is sent for interview, the date and time of the interview, and the address where the applicant is to report for employment;

(d) The approximate amount of fee to be charged and to be collected from the applicant for employment, if the applicant accepts employment, and starts work and any fee conditions as stated by the employer on the Job Order, and a statement that the employer is not responsible for paying the fee unless specifically provided for on the Job Referral Document;

(e) The kind of work or employment as shown by the job classification stated in the Job Order;

(f) The daily hours of work and the approximate wages or salary, including any consideration of privilege;

(g) If any labor trouble exists at the place of employment, a statement of that fact;

(h) Union membership, if required.

(2) The job referral document shall be signed by a representative of the employment agency, and shall be delivered to the applicant for employment or sent to the applicant for employment by United States mail.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0071**

**Document to Include Expiration of Referral Information**

The date and the fact that 90 days from the date of referral the referral will expire and the applicant for employment may be liable for a fee thereafter only if the applicant accepts a job in the position to which the applicant was specifically referred must be included in the Job Referral Document.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.172

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0072**

**Applicant Shall Receive Job Referral Document**

The completed Job Referral Document shall be given to the applicant for employment prior to any job interview, with the following exceptions:

- (1) No job referral document is required when the referral is made to a fee paid position.
- (2) If the referral is made by telephone contact or other means of remote communication, the full content of the job referral document will be revealed to the applicant for employment at the time of referral and the job referral document will be mailed to the applicant.
- (3) Job referral documents which are mailed, must be mailed within 24 hours or one working day of the referral contact with the applicant for employment.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.172

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**Disputes Between Agencies**

**839-017-0101**

**Fee Earned by Agency Responsible for Placement**

In disputes between employment agencies concerning the earning of a fee for placement of an applicant for employment, the fee shall be earned by the agency responsible for the applicant being placed. A reasonable effort shall be made by an agency which bills an applicant for employment to determine that it is entitled to the fee before billing. The applicant for employment shall be responsible for only one full fee for any single placement, and this fact shall be stated in the contract. (See Appendix 1 and OAR 839-017-0012)

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0102**

**Determination of Agency Entitled to Fee**

In order to make a reasonable effort to determine the agency entitled to the fee, the following rules shall be followed:

(1) When two agencies have referred the applicant for employment to the same position, the agency entitled to the fee shall be the agency that:

(a) First established a scheduled appointment between the applicant for employment and employer for the specific position which the applicant subsequently accepted and started work;

**EXAMPLE:** On Monday, agency "A" arranges an appointment for an applicant with an employer for Wednesday morning. Agency "B" arranges an appointment for the same applicant for the same job opening on Tuesday morning for Tuesday afternoon. If the applicant accepts the position and starts work, Agency "A" is entitled to the fee.

(b) Records accurately the time and date of the making, by agency personnel, of the appointment for interview;

**EXAMPLE:** Agency personnel record that they called employer at 9:06 a.m., October 18th and scheduled interview for applicant.

(c) And, as soon as possible after the appointment is established, advises the applicant for employment by complying with the job referral document requirements.

(2) Resume' Mailing. The resume' must indicate clearly the name and address of the referring agency. When a resume' is mailed by the agency to the employer, the agency is entitled to the fee when:

(a) The agency contacts the applicant for employment immediately and advises the applicant of the name of the employer to whom the resume' was mailed, and, the employer gives or has given the agency a bona fide job order and the agency first establishes a scheduled appointment with the applicant and complies with job referral document requirements;

(b) Or the employer, as the result of the mailing, contacts the applicant for employment directly, arranges the first scheduled appointment and gives the agency a bona fide job order and the agency complies with job referral document requirements;

(c) And as a result of the job interview, the applicant accepts a specific position and starts work.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0103**

**Definitions for the Purpose of Solving Interagency Disputes Only**

(1) "Employer" means any person or agent of a company that has the authority and responsibility to interview or initiate the action that would result in a position with said company. It is recognized that some companies can have several



employers within the company (the same legal entity) due to departments or locations. If an interview is scheduled for an applicant for employment to a different department or location by the original interviewer within the company, it will be considered to be the same employer. If an interview is scheduled for the same applicant for employment by another employment agency to a different department, for the purpose of this definition, it would be considered a different employer even though it may be within the same company.

(2) "Scheduled Appointment" means a definite date and time of interview with a specific company representative. If the time of making the first interview is not determined satisfactorily between the agencies involved, the employer's statement shall be accepted as to the time of the making of the first appointment.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**Rebate of Interest Charges and Other Charges for Permanent  
Employment Lasting Less Than 90 Days**

**839-017-0151**

**Interest, Fees, or Other Charges Allowed as Credit**

In all cases where employment lasts less than 90 full calendar days, all interest, fees, or other charges paid or required to be paid to any person or organization in order to procure the funds to pay an employment agency's charge for service shall be allowed as a credit against the charge. This includes all carrying and service charges and all related charges in obtaining funds for payment of the agency's charge.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 12-1978, f. & ef. 8-16-78

**839-017-0152**

**Interest, Fees, and Other Charges May Be Prorated**

(1) If interest, fees, or other charges are incurred by the applicant for employment for more than the agency's charge for service and in such a way that the interest, fees, or other charges for the employment agency's services are not stated separately, then the interest, fees, and other charges may be prorated to cover only those interest, fees, and service charges directly attributable to the payment of the employment agency's charge for services.

(2) In cases where employment involves commission earnings and service charges are based upon annual estimated earnings, and employment is terminated for any cause prior to 12 months but after 90 days, a pro-rata computation shall be made on all charges paid or required to be paid (by an applicant) to any person or organization in order to procure the funds to pay an employment agency's charges for the period from 91 days until date of termination within a 12 month period. The pro-rata computation shall be allowed as a credit against the agency fee.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77

**839-017-0153**

**Agency to Procure Necessary Information**

A reasonable effort shall be made by the agency, within the ten day specified time for making the rebate, to procure all information necessary regarding the interest, fees, and other charges required to be paid by the applicant for employment in procuring the funds to pay the agency's charge for service.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.165

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**False and Misleading Advertising**

**839-017-0177**

**Publication of False, Misleading, or Fraudulent Information Prohibited**

No employment agency shall knowingly publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. The following are types of advertising which are considered false or misleading:

- (1) Exclusive listing in advertisements of jobs designated as "fee paid" by agencies which do not operate exclusively on the basis of no fee to the applicant for employment, in such manner as to give the false impression that all jobs handled by the agency are "fee paid" jobs.
- (2) Where both "fee" and "fee paid" jobs are listed, use of the phrases such as "100 percent free" or "all free" as column headings, so as to give the impression that the entire agency operation is on a "fee paid" basis.
- (3) Designating jobs as "fee paid" where this is true only if certain conditions are met. For example, jobs where the employer will pay the fee only if the applicant for employment stays on the job for a stipulated period of time, or jobs where the employer deducts the amount of the fee from the applicant's salary, or where the employer will pay only a portion of the fee, or if the fee payment on the part of the employer is a negotiable item.
- (4) Use of the phrase "lowest fee" or similar words, where the agency's fee is not in fact the lowest fee rate in effect in the area in which the agency does business.
- (5) Headlines or titles relating to fees, such as "Applicant Pays Fee" or "Fee Paid", must be set in the same type of equal size and boldness, when an agency advertises both categories of jobs.
- (6) In group advertisements which contain both "Employer Pays Fee" and "Applicant Pays Fee" listings, all listings of

each type shall be grouped together in a block under the respective title, or each listing must include a designation as to the source of the fee.

(7) If an advertisement is of a job or jobs for which the employer pays the fee, and if the agency so advertised, the ad must state in type of equal size and boldness, that the agency also handles jobs for which the applicant for employment pays the fee if such is the case.

(8) Ads worded so as to mislead the applicant for employment regarding the nature of the position advertised.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.195

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 12-1978, f. & ef. 8-16-78; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0178**

**Advertising Must Be Factual**

All advertising must be factual as to the requirements of the job. Sufficient information must be contained in each ad to indicate the nature, terms and conditions of the position. Omission of unusual or special job requirements and characteristics or of the amount of wages to be paid is considered misleading or fraudulent.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.195

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0180**

**Advertising Deemed False or Misleading**

Advertising which shall be deemed false and misleading includes, but is not limited to, advertising which fails to conform to the following specifications:

(1) If specific requirements not normally associated with the position advertised are required, the requirements must be indicated in the ad.

(2) No salary shall appear in an ad except one which appears in the actual job order as a starting salary. Where the top of the salary range is quoted, it must be preceded by the bottom of the salary range and the word "to" or " \_\_\_\_\_ ".

(3) If the position advertised is located fifty miles or more from the location of the office of the agency, the fact that it is non-local or that relocation is necessary, or the location of the place of employment shall be indicated in the listing.

(4) The entire assumed business name or corporate name of the agency, without abbreviation, must appear on any sign, advertising, or promotional material used by the agency. Except in an advertisement in a section of a publication that otherwise clearly designates the advertisement as that of an employment agency, every employment agency charging or collecting a fee for services from individuals seeking or obtaining employment shall use the word "agency" or "agencies" as part of its licensed name, or after its licensed name, in type no smaller than the type employed in the body of the advertisement.

(5) The word "open" or the symbol "\$\$\$" or words and symbols of similar import may not be used as a substitute for the salary of any position or positions in an ad.

(6) The symbol "+" or the word "plus" may be used in connection with a salary appearing in an ad only when it refers to an extra such as a car, bonus, commission, or lodging which is provided in addition to the given salary. Such extras must be contained in the agency's job order for the position. The salary figure in the advertisement can only represent the amount of salary or draw indicated on the job order.

(7) The word "up" may be listed with a salary appearing in an ad only when the employer has made a definite commitment to the agency to pay a higher salary for a highly qualified employee. The commitment by the employer to pay a higher salary must be contained in the agency's job order for the position.

(8) In accepting a job order from an employer, the agency should determine whether salary quoted by the employer is a "guaranteed" salary or is based on anticipated commissions and/or bonuses. If a salary advertised is based entirely or partially on a bonus and/or commission, an indication to this effect must be contained in the ad.

(9) If an employment agency indicates in its letters or general advertising that members of the agency are "certified", "registered", or "licensed", or uses other terms conveying special qualifications or abilities, the members of the agency must in fact be certified, registered or licensed and possess special qualifications or abilities as conveyed by the terms so used. Acronyms, initials or other such terms used to advertise special qualifications or abilities must be recognized as those which are used by the organization or government agency "certifying", "registering", "licensing", or attesting to an agency member's special qualifications or abilities.

(10) If the employment agency advertises a job where the employment agency itself is the employer, the ad shall so indicate.

(11) If an employment agency which handles both "fee" and "fee paid" positions, advertises a "fee paid" position, the advertisement must include the job order number of the "fee paid" position or positions.

(12) Employment positions will not be advertised on the same day under two or more different job descriptions.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 149(Temp), f. 10-30-73, ef. 11-1-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 12-1978, f. & ef. 8-16-78; BL 8-1980, f. & ef. 9-5-80; BL 10-1987(Temp), f. 9-30-87, ef. 10-1-87; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

## **Enforcement Action Against Bond or Deposit**

### **839-017-0271**

#### **Generally**

(1) The action on the bond or letters of credit maintained by the employment agency may not be joined in a suit or action on the bond brought for any other claim.

(2) Any person seeking to recover on the bond must first establish the employment agency's liability. The liability may be established in any of the following ways:

(a) A judgment of the court;

- (b) A final administrative order issued pursuant to statute or rule;
- (c) The acknowledgment of the employment agency of such liability;
- (d) Other satisfactory evidence of liability as may be shown which establishes the liability

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 10-1987(Temp), f. 9-3-87, ef. 10-1-87; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0272**

**Filing Claims Against Bond or Letters of Credit Maintained by the Employment Agency; Time for Filing Claims**

- (1) Claims against the bond will not be paid unless the claimant or claimant's assignee gives notice of the claim by certified mail to the surety.
- (2) Any claim or Notice of Claim filed pursuant to a claimant's right of action must be filed as follows: If the filing is against a surety bond, the claim or notice must be filed with the surety. The name and address of the surety may be obtained from the employment agency.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**Civil Penalties for Violations of Private Employment Agency Matters**

**839-017-0274**

**Violations for Which a Civil Penalty May Be Imposed**

The Commissioner may impose a civil penalty not to exceed \$2,000 against any person, firm, organization, limited liability company or corporation for violations of any of the following statutes, rules or orders:

- (1) Violation of any provision of ORS 658.005 to 658.245.
- (2) Violation of any provision of OAR 839-017-0000 to 839-017-0477.
- (3) Violation of any term or condition of an Order of the Commissioner issued pursuant to any violation of ORS 658.005 to 658.245 and OAR 839-017-0000 to 839-017-0477.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0275**

**Violations Separate and Distinct**

Each violation is a separate and distinct offense in the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.115

Hist.: BL 8-1988 f. & cert. ef. 5-16-88

**Administration**

**839-017-0276**

**Definitions**

As used in OAR 839-017-0274 to 839-017-0280, a person acts knowingly when the person has actual knowledge of a thing to be done or omitted or should have known the thing to be done or omitted. A person should have known the thing to be done or omitted if the person has knowledge of facts or circumstances that would place the person on reasonably diligent inquiry. A person acts knowingly if the person has the means to inform himself or herself but elects not to do so. For purposes of this rule, a person, firm, organization, limited liability company or corporation is presumed to know the affairs of the employment agency.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

**839-017-0277**

**Criteria to Determine Civil Penalty**

- (1) The Commissioner shall consider the following mitigating and aggravating circumstance when determining the amount of any civil penalty to be imposed against an employment agency and shall cite those the Commissioner finds to be applicable:
- (a) The actions of the employment agency in responding to previous violations of statutes and rules.
  - (b) Prior violations, if any, of statutes or rules.
  - (c) The opportunity and degree of difficulty to comply.
  - (d) Magnitude and seriousness of violation.
  - (e) Whether the employment agency knew or should have known of the violation.

(2) It shall be the responsibility of the employment agency to provide the Commissioner with evidence of any mitigating and aggravating circumstances set out in section (1) of this rule.

(3) In arriving at the actual amount of the civil penalty, the Commissioner shall consider the amount of money, if any, taken from an applicant for employment by the employment agency in violation of any statute or rule.

(4) Notwithstanding any other section of this rule, the Commissioner shall consider all mitigating and aggravating circumstances presented by the employment agency for the purpose of reducing the amount of the civil penalty to be imposed.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

## **839-017-0280**

### **Schedule of Civil Penalties**

(1) The civil penalty for any one violation shall not exceed \$2,000. The actual amount of the civil penalty will depend on all the facts and on any mitigating and aggravating circumstances.

(2) Repeated violations of the provisions of ORS 658.005 to 658.245 or OAR 839-017-0000 to 839-017-0477 are considered to be of such magnitude and seriousness that no less than \$500 for each violation will be imposed when the Commissioner determines to impose a civil penalty.

(3) In addition to any other provision of these rules, the following violations are so serious and of sufficient magnitude that the minimum civil penalty indicated will be imposed, when the Commissioner determines to impose a penalty:  
Violation -- Minimum Penalty

(a) Knowingly giving, publishing or causing to be published false fraudulent or misleading information in violation of ORS 658.195, OAR 839-017-0177 and 839-017-0178 -- \$1,000;

(b) Knowingly charging a fee in excess of the fee schedule published by the employment agency in violation of ORS 658.155. -- \$700;

(c) Knowingly charging a fee without a bona fide job order in violation of ORS 658.165. -- \$700;

(d) Knowingly referring an applicant for employment without a bona fide job order in violation of ORS 658.165. -- \$700;

(e) Knowingly failing to provide an applicant for employment with a job referral document in violation of ORS 658.172 and OAR 839-017-0072 -- \$500;

(f) Knowingly issuing a contract which terms would violate any law or knowingly attempting to fill a job order in violation of any law in violation of ORS 658.176. -- \$500;

(g) Knowingly requiring or accepting a fee from an applicant for employment prior to the applicant actually starting work in violation of ORS 658.176. -- \$500;

(h) Knowingly failing to comply with any provision pertaining to refunds to applicants for employment in violation of ORS 658.185. -- \$300;

(i) Placing or assisting in the placement of any minor if the employment is in violation of laws regulating the employment of minors in violation of ORS 658.205(4). -- \$500;

(j) Knowingly permitting a person of bad character to frequent or be employed by the agency in violation of ORS 658.205(2). As used in this subsection a "person of bad character" includes but is not limited to a person convicted of a felony; a person who has had a license revoked, suspended, denied or refused to be issued; a person who has repeatedly violated or caused to be repeatedly violated any statute or rule pertaining to private employment agency matters, tax matters and other statutes and rules pertaining to the employment of employees or to the protection of consumers in their dealings with employment agencies. -- \$500;

(k) Knowingly referring the applicant for employment to a place where a labor dispute exists in violation of ORS 658.205(5). -- \$500;

(l) Splitting a fee in violation of ORS 658.205(7). -- \$500;

(m) Charging a fee in violation of ORS 658.205(8) and 658.205(9) -- \$500;

(n) Requesting or accepting an assignment of wages in violation of ORS 658.205(10). -- \$500.

(4) Notwithstanding section (3) of this rule, when the Commissioner determines to impose a civil penalty, the minimum civil penalty to be imposed for knowing violations of OAR 839-017-0180, Advertising Deemed False or Misleading, shall be \$100. In the case of 2 or more violations of the same advertising provision in OAR 839-017-0180 that appears in the same publication on the same date, all such violations will be considered as one for purposes of computing the penalty.

(5) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-017-0277.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 8-1988 f. & cert. ef. 5-16-88; BL 6-1997, f. & cert. ef. 11-13-97

## **Denying, Suspending, Revoking or Refusing to Renew Licenses**

### **839-017-0285**

#### **Denying, Suspending, Revoking or Refusing to Renew Licenses**

The Commissioner may deny, suspend, revoke or refuse to renew an employment agency license under the following circumstances:

(1) When the licensee or applicant for a license fails to obtain and/or continuously maintain the bond or deposit required by ORS 658.075.

(2) When the licensee or applicant for a license makes any wilful misrepresentation, false statement or certification or wilfully conceals information on the license application.

(3) When the licensee or license applicant is convicted of a felony in connection with the operation of an employment agency.



(4) Whenever it appears to the Commissioner that if the licensee were then applying for a license or to renew a license, the application should be denied or refused.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.115

Hist.: BL 8-1988 f. & cert. ef. 5-16-88

**Special Waivers**

**839-017-0300**

**Waiver from Use of Word "Agency" or "Agencies"**

(1) Employment agencies desiring to apply for a waiver from the use of the word "agency" or "agencies" as required by ORS 658.195(4) may do so by submitting an application to the Bureau of Labor and Industries.

(2) Applications for a waiver will be in writing and on forms provided by the Bureau of Labor and Industries. All completed applications will be mailed or delivered to the Licensing Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon #32, Portland, Oregon, 97232.

(3) Applicants for waivers must clearly and concisely state each and every situation and each and every reason for desiring not to use the word "agency" or "agencies". All such reasons must be in writing and appear on the application form or attachments thereto.

(4) When granting or denying an application for a waiver, the Commissioner or the Commissioner's designated representative, will consider the following circumstances:

- (a) Whether the name of the agency will convey to the public that an employment agency rather than an employer is involved when the word "agency" or "agencies" is not used;
- (b) Whether descriptive language proposed to be used by the agency in conjunction with its licensed name will convey to the public that an employment agency rather than an employer is involved when the word "agency" or "agencies" is not used;
- (c) Whether advertising materials are directed toward the public or employers;
- (d) Whether signs are used primarily for identification purposes rather than advertising;
- (e) Whether forms used by the agency are internal in nature and not normally seen by the applicant for employment;
- (f) Other situations and circumstances as may be appropriate.

(5) The Commissioner or the Commissioner's designated representative, will consider any and all the circumstances set forth in section (4) of this rule when granting or denying an application.

(6) The Commissioner or the Commissioner's designated representative will specify each and every reason for denying an application and each and every condition on approval of the application, if any.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.195

Hist.: BL 5-1981, f. 6-2-81, ef. 6-8-81; BL 8-1988 f. & cert. ef. 5-16-88

**Disputes Between Agencies and Their Employees**

**839-017-0376**

**Disputes Between Agencies and Their Employees**

In order to properly settle any complaints that may arise and in order to establish all sums legally owed to any employee of the employment agency, the employment agency:

- (1) Will maintain employment records of all employees for three years. These records will include the original application for employment with the agency and will indicate starting date of employment, rate of pay and/or rate of commission and method of compensation, and date of termination of employment if applicable.
- (2) Shall retain for three years copies of all contracts signed with employees of the agency relative to conditions of employment.
- (3) Will indicate on all receipts of moneys received from applicants in payments of fees, the name of employee or agent of the employment agency responsible for placement of applicant.
- (4) Will give to each employee on payroll checks, or by separate document, a record of commissions or other sums earned and paid in full or in part during each payroll period established by the employer or at least every 35 days if no more frequent payroll period has been established.
- (5) Canceled payroll checks, and state and federal tax reports shall be retained as required by State and Federal law.
- (6) Records required by Fair Labor Standards Act (FLSA) and Oregon's minimum wage law must be kept for a period of three years on all employees regardless of the type of specific agreement for compensation between the agency and its employees.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.005 - 658.245

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 6-1997, f. & cert. ef. 11-13-97

**Record Keeping**

**839-017-0476**

**Time for Maintenance of Records**

- (1) Except as provided in section (2) of this rule, all records of the employment agency will be maintained for a period of three years.
- (2) Copies of all job advertisements with the information required by OAR 839-017-0477(6) thereon shall be

maintained for a period of one year.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.078

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 8-1988 f. & cert. ef. 5-16-88

**839-017-0477**

**Method of Maintaining Records**

- (1) All records of the agency pertaining to a job referral, and placement of an applicant for employment shall be maintained together or adequately cross-indexed for easy retrieval by the Bureau of Labor and Industries. This includes, but is not limited to, the applications, contract, addendums to contracts, reference information (employment, personal, or credit), and a copy of all job orders and job referral documents.
- (2) A separate file shall be maintained for applicants for employment placed by the agency, either alphabetically, or by adequate cross-index for easy retrieval for the Bureau of Labor and Industries.
- (3) If the applicant for employment has been placed by the agency, the name of the employer, the starting date of employment, the amount of starting salary, the amount of the fee charged, and whether the fee is paid by the employer or the applicant shall be written on the application or appended to the application.
- (4) An adequate file or log of job orders shall be maintained in chronological order. If an agency wishes, it may have a separate file for "fee paid" orders. When a job order position is filled by the agency, the true name as it appears on the contract of the individual who obtained the job, the date the job was filled, and the fee charged for the service will be appended to the job order.
- (5) Each agency shall keep a record of all receipts of money received from an applicant for employment in payment of a charge for service. The receipts shall be filed together or adequately cross-indexed for easy retrieval for the Bureau of Labor and Industries. All receipts or evidence of refunds shall be filed with the receipts showing payment of a charge for service or adequately cross-indexed for easy retrieval for the Bureau of Labor and Industries.
- (6) Each agency shall keep copies of all job advertisements correlated to show the date and the publication in which the advertisement appeared together with the job order number of each job advertised.
- (7) When the charge for services of the employment agency is not made to or collected from individuals seeking or obtaining employment, for purposes of ORS 658.005 to 658.245 the agency is not required to keep records of contracts or receipts of moneys in connection with the placement of such individuals.

Stat. Auth.: ORS 658.210

Stats. Implemented: ORS 658.078

Hist.: BL 150(Temp), f. 12-13-73, ef. 12-15-73; BL 156(Temp), f. 2-20-74, ef. 3-1-74; BL 157, f. 2-20-74, ef. 3-15-74; BL 200, f. 11-1-77, ef. 11-15-77; BL 12-1978, f. & ef. 8-16-78; BL 10-1987(Temp), f. 9-3-87, ef. 10-1-87; BL 8-1988 f. & cert. ef. 5-16-88

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 18**

**APPRENTICESHIP AND TRAINING COUNCIL**

**Expedited Contested Case Hearings Rules for Proposed  
Cancellation of Apprenticeship Agreements**

**839-018-0000**

**Model Rules of Procedure**

The Attorney General's *Model Rules of Procedure*, effective September 9, 1995, and amendments thereto, are hereby adopted by reference as permanent rules for the State Apprenticeship and Training Council, except to the extent modified in this division or any other division of chapter 839 of the Oregon Administrative Rules. The rules for expedited contested case proceedings are set forth in OAR 839-018-0000 to 839-018-0330. Any matters not addressed in OAR 839-018-0000 to 839-018-0330 will be governed by the *Model Rules of Procedure*.

Stat. Auth.: ORS 344.750 & 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0010**

**Statement of Purpose**

- (1) The purpose of OAR 839-018-0000 to 839-018-0330 is to give all persons involved in an expedited contested case hearing before the State Apprenticeship and Training Council clear guidelines to follow and an understanding of what is expected of participants.
- (2) The major focus of these rules is to define the participants, provide a procedure to allow all participants to raise claims and defenses, assure that the facts and issues are properly presented and addressed, and provide for thorough and expeditious hearings.

(3) In an effort to provide expedited hearings, OAR 839-018-0000 to 839-018-0330 establish time limitations which will be strictly followed. Waiver or extension of the set time limitations will be granted only under the limited circumstances as set forth in these rules.

(4) OAR 839-018-0000 to 839-018-0330 apply to all contested case proceedings pending with or received by the Council on or after the effective date of OAR 839-018-0000 to 839-018-0330.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996; f. & cert. ef. 12-17-96

## **839-018-0020**

### **Definitions**

The following definitions apply, unless the context requires otherwise, to rules 839-018-0000 through 839-018-0330:

(1) "Administrative Law Judge" means an individual designated by the State Apprenticeship and Training Council to preside over all aspects of a contested case hearing including motions, hearings, and preparation of the Proposed Order.

(2) "Apprentice" means a worker who is employed to learn an apprenticeable occupation under standards of apprenticeship approved by the State Apprenticeship and Training Council.

(3) "Apprenticeship Agreement" means a written agreement between an apprentice and a local joint committee which shall contain the minimum terms and conditions of the employment and training of the apprentice.

(4) "Case Presenter" means an employee of the Bureau of Labor and Industries assigned to present the case for the Committee at the contested case hearing and to handle all related matters, but does not include counsel for the Committee.

(5) "Chair" means the Commissioner of the Oregon Bureau of Labor and Industries who serves as chairperson of the Council pursuant to ORS 660.110(5).

(6) "Charging Document" means any document issued by the State Apprenticeship and Training Council proposing to cancel an apprenticeship agreement for good cause due to the failure of an Apprentice to meet the minimum terms and conditions of his or her apprenticeship agreement after opportunity for correction.

(7) "Committee" means local joint committee, including local joint apprenticeship committees, local joint training committees and trade committees.

(8) "Council" means the State Apprenticeship and Training Council, comprised of those individuals appointed by the Governor pursuant to ORS 660.110 to administer, execute and carry out the provisions of ORS 660.002 to 660.205.

(9) "Counsel for the Committee" means, where the Committee requires the assistance of an attorney, pursuant to ORS Chapter 180, the Attorney General.

(10) "Director" means the Oregon State Director of Apprenticeship and Training.

(11) "Good cause" means failure to comply with one or more of the terms and conditions of the apprenticeship agreement after the Apprentice has been afforded a reasonable opportunity to correct the deficiency. Good cause includes but is not limited to failure to report to work, nonattendance at related training, failure to submit work progress reports, or lack of response to committee citations, after the Apprentice has been afforded a reasonable opportunity for

correction.

(12) "Participant" means the Apprentice or Committee involved in a particular contested case proceeding;

(13) "Showing of necessity" means:

(a) A conflict with the hearing date due to a previously scheduled professional commitment, vacation, or medical procedure; or

(b) Inability to complete discovery or secure the attendance of a critical witness due to circumstances beyond the control of the Committee or Apprentice; or

(c) Any circumstance beyond the control of the Apprentice or Committee which, in the discretion of the Administrative Law Judge, constitutes a compelling justification for postponement.

(14) "Substantial prejudice" means harm to a participant's rights which would affect the outcome of the case.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0030**

**Charging Documents**

A Charging Document must contain:

- (1) A statement of the Apprentice's right to a contested case hearing;
- (2) A statement of the authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved; and
- (4) A short and plain statement of the matters asserted or charged.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0040**

**Service of Documents**

- (1) The Charging Document shall be served on the Apprentice by personal service or by registered or certified mail.
- (2) The response of the Apprentice (Answer) and accompanying request for hearing may be served by regular U.S. mail, certified or registered mail, or by hand delivery to the address provided on the Charging Document.
- (3) All other documents may be served by regular U.S. mail, addressed to the Administrative Law Judge designated on

the Notice of Hearing, except that when the Committee serves a document on the Administrative Law Judge, the Committee will simultaneously mail a copy to the Apprentice or counsel for the Apprentice.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0050**

**Calculation of Time and Filing Dates**

- (1) The computation of any period of time will not include the day of receipt which triggers a requirement to respond. If, for example, the Charging Document is received on Monday, the time period to file an Answer will not start to run until Tuesday. The computation will include the last day of this period unless it is a Saturday, Sunday, or holiday officially recognized by the State of Oregon or the federal government. If the last day of the time period is a Saturday, Sunday, or holiday, the period shall run until 5 p.m. of the next day which is not a Saturday, Sunday or holiday.
- (2) Except as modified by statute or enlarged by these rules, or by decision of the Administrative Law Judge or Council, a document is filed either on the date received by the Director or Administrative Law Judge, or on the date postmarked on the properly addressed document, whichever is earliest;
- (3) All time periods are measured in calendar days.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0060**

**Timeliness**

- (1) Any document, whether submitted by the Committee or Apprentice, that is filed with the Director or Administrative Law Judge beyond the date due may be disregarded by the Director or Administrative Law Judge.
- (2) Where the Committee or Apprentice requires additional time to submit any document, a request for such extension must be made to the Administrative Law Judge no later than the due date for the document in question. The Administrative Law Judge may grant such an extension of time only in situations where the need for more time is due to circumstances beyond the control of the requester or where refusal to extend the time would create an undue hardship on the requester. The Administrative Law Judge shall notify the requester whether it will be allowed.
- (3) Where an extension of time is allowed, the Administrative Law Judge shall advise the other participant of the extension and the new due date, and that such participant shall have the same extension of time.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996; f. & cert. ef. 12-17-96



**839-018-0070**

**Request for a Contested Case Hearing and Answer**

- (1) Any Apprentice who wants to contest a Charging Document shall file a response (Answer) to the Charging Document and request a contested case hearing. The Answer and request must be in writing and filed with the Director within the time limitation established in the Charging Document.
- (2) The Answer must admit or deny each allegation of failure to meet the minimum terms and conditions of the apprenticeship agreement in the Charging Document, and include a statement of each relevant defense to those allegations which are denied.
- (3) The Answer shall include a list of witnesses the Apprentice intends to call at hearing, copies of documents intended to be presented at hearing, and a statement of need for the assistance of an interpreter or assistive communication device.
- (4) The form Answer attached to the Charging Document contains a request for hearing and, when completed in the manner specified in these rules and timely returned to the Director, satisfies the requirements of this rule.
- (5) Where an Apprentice fails to file an Answer and request for a hearing within the time limitation established in the Charging Document, the Apprentice will be in default as to the allegations contained in the Charging Document.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0080**

**Notice of Hearing**

- (1) When an Apprentice makes a timely written request for a contested case hearing, that hearing will be scheduled within approximately 20 days of receipt of the request by the Director and the Apprentice shall receive a Notice of Hearing.
- (2) The Notice of Hearing shall contain:
  - (a) A statement of the time and place of the hearing;
  - (b) A statement of the authority and jurisdiction under which the hearing is to be held;
  - (c) A reference to the particular sections of the statutes and rules involved;
  - (d) A short and plain statement of the matters asserted or charged;
  - (e) The name of the Administrative Law Judge designated by the Council to preside at the hearing and address and telephone number where the Administrative Law Judge can be reached;
  - (f) A statement indicating whether or not the case for the Committee will be presented by the Attorney General or Case Presenter, and the address and telephone number where the designated representative can be reached.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0090**

**Location of Contested Case Hearings**

- (1) Except as limited by section (2) of this rule, contested case hearings will be held by telephone.
- (2) Contested case hearings will be held in person when, in the discretion of the Administrative Law Judge, special circumstances exist which make the conduct of a hearing by telephone impracticable. Examples of such special circumstances include, but are not limited to, an inability to speak or understand English or a physical hearing or speaking impairment, on the part of an Apprentice or witness, requiring an interpreter or assistive communication device.
- (3) Special circumstances making a telephone hearing impracticable should, in the first instance, be indicated in the Answer filed by the Apprentice. If these circumstances are not known at the time the Answer is filed, but become apparent thereafter, the Apprentice or the Committee shall notify the Administrative Law Judge as soon as possible, either by telephone or in writing. The Apprentice or Committee may make a motion to convert the hearing to an in-person hearing, or the Administrative Law Judge may, on his or her own motion, convert the telephone hearing to an in-person hearing once special circumstances are found to exist.
- (4) When a contested case hearing is held in person, it will generally be held in a Bureau of Labor and Industries office nearest the community in which the Committee supervising the Apprentice is located. The Apprentice shall be advised of the location for the hearing in the Notice of Hearing.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0100**

**Information for Contested Case Hearings**

- The Hearings Unit of the Bureau of Labor and Industries shall provide a statement of information for all Apprentices involved in a contested case hearing that contains:
- (1) Instructions that after the Answer, all filings, correspondence and documents shall be transmitted to the Administrative Law Judge through the Hearings Unit at this address: Bureau of Labor and Industries, Hearings Unit, Suite 1005, 800 NE Oregon Street, #32, Portland, OR 97232-2162.
  - (2) The information required under ORS 183.413(2) concerning the rights of the Apprentice at the hearing.
  - (3) A statement that an order may be issued upon default if an Apprentice who has requested a hearing fails to appear at the hearing if the Committee has presented a prima facie case on the record.
  - (4) A statement that the Apprentice's address as it appears in the Committee's files, and to which the Notice of Hearing was sent, will be the address used throughout the proceeding. An Apprentice whose address changes must notify the Administrative Law Judge; otherwise, the Administrative Law Judge shall presume the address on file to be correct.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996; f. & cert. ef. 12-17-96

**839-018-0110**

**Representation of an Apprentice by Counsel**

- (1) At his or her own expense, any Apprentice may be represented by a member in good standing of the Oregon State Bar or a member in good standing of the bar of any United States court or the highest court of any state who is permitted to appear in a particular proceeding by order of the Administrative Law Judge, in compliance with ORS 9.241 and Uniform Trial Court Rules 3.170. Counsel may perform all functions consistent with representation of a client.
- (2) Once the contested case hearing has begun, no Apprentice will be allowed a recess to obtain the services of counsel.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0120**

**Case Presenter**

- (1) The Case Presenter is athorized by ORS Chapter 183 to appear on behalf of and represent the Committee. The Case Presenter can perform any function not prohibited by this rule.
- (2) The Case Presenter may not make legal argument.
  - (a) Legal argument includes arguments on:
    - (A) The jurisdiction of the Council to hear the contested case;
    - (B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Council or Committee; and
    - (C) The application of court precedent to the facts of the particular contested case proceeding.
  - (b) Legal argument does not include opening and closing statements, presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:
    - (A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;
    - (B) Comparison of prior actions of the Council or Committee;
    - (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and
    - (D) The admissibility of evidence or the correctness of procedures being followed.
- (3) When a Case Presenter is representing the Committee in a hearing, the Administrative Law Judge shall advise such

representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the Administrative Law Judge shall provide reasonable opportunity for the Case Presenter to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0130**

**Motions**

Unless otherwise specified, motions may be made in writing or by telephone, and must be directed to the Administrative Law Judge. Motions which may be made in any contested case proceeding include but are not limited to the following:

- (1) Motion to Dismiss: This motion may be made at any time after service of the Charging Document and before the presentation of evidence at hearing and shall be based upon:
  - (a) Lack of jurisdiction over the subject matter or person;
  - (b) Insufficiency of process or service of process.
- (2) Motion to Withdraw Charging Document: This motion may be made at any time after service of the Charging Document and before the presentation of evidence at hearing and may be based on insufficiency of evidence to proceed or such other basis as, in the judgment of counsel for the Committee or the Case Presenter, constitutes equitable grounds for withdrawal of the Charging Document.
- (3) Motion to Amend: This motion may be made prior to hearing or at hearing only by permission of the Administrative Law Judge. Permission shall be freely given when the presentation of the merits of the action or defense will be served thereby and the non-moving participant fails to satisfy the Administrative Law Judge that such amendment would substantially prejudice the non-moving participant in maintaining the action or defense upon the merits.
- (4) Motion for Hearing In Person: This motion must be made within 10 days following the date of issuance of the Notice of Hearing, and shall be based upon special circumstances which make a hearing by telephone impracticable. Examples of such special circumstances include:
  - (a) The involvement in the hearing of a person with an inability to speak or understand the English language or with a physical hearing or speaking impairment, requiring the assistance of an interpreter or appropriate communication device; and
  - (b) Cases in which substantial documentary evidence will be introduced by either the Committee or Apprentice.
- (5) Motion to Change the Place of Hearing: This motion must be made within 10 days following the date of issuance of the Notice of Hearing.
- (6) Motion for Hearing by Telephone: This motion must be made within 10 days following the date of issuance of the Notice of Hearing in those instances where special circumstances believed to exist were mistaken or no longer exist, or exist but do not make a telephone hearing impracticable.
- (7) Motion for Discovery: This motion must be made within 10 days following the date of issuance of the Notice of

Hearing.

(8) Motion for a Postponement:

(a) The Apprentice or the Committee making a request for a postponement must state in detail the reason for the request. The Administrative Law Judge may grant the request upon a showing of necessity therefore;

(b) In cases where the Committee and Apprentice agree to a postponement, in order to be effective, the Administrative Law Judge must approve of this agreement.

(9) Motion for Summary Judgment:

(a) A motion may be made by the Committee or Apprentice, or the Administrative Law Judge may independently allow, for an accelerated decision as to all or part of the issues raised in the Charging Document. The motion must be in writing and may be based on any of the following conditions:

(A) Direct or collateral estoppel;

(B) No issue of genuine fact exists and a participant is entitled to judgment as a matter of law, as to all or any part of the proceeding; or

(C) Such other reasons as are just.

(b) Such motion shall be made within 15 days of issuance of the Notice of Hearing.

(10) Motion to Exclude Witnesses: This motion may be made at any time prior to the hearing or during the hearing. The Administrative Law Judge may, without a motion, exclude witnesses. For purposes of exclusion, the Apprentice or Committee staff presenting a case are not considered witnesses.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

## **839-018-0140**

### **Discovery**

(1) The Apprentice shall include the names of witnesses to be called at hearing and copies of documents the Apprentice intends to introduce at hearing with the Answer to the Charging Document.

(2) Within five days after the Notice of Hearing is issued, the Committee shall mail or deliver to the Apprentice a list of witnesses to be called by the Committee at hearing, and copies of the documents the Committee intends to introduce into evidence at the hearing.

(3) At least five days prior to commencement of a telephone hearing, the Apprentice and Committee shall provide to the Administrative Law Judge copies of documentary evidence which that participant will seek to introduce as evidence at hearing.

(4) Following the submissions required in section (1)-(3) of this rule, and before the hearing, the Apprentice and Committee shall, as soon as practicable, provide to the Administrative Law Judge any newly discovered document or the name and telephone number of any newly discovered witness to be produced at hearing.

(5) Either the Committee or Apprentice may make appropriate motions for discovery prior to hearing.

(6) Nothing in this rule precludes an Apprentice or the Committee from seeking to introduce documentary evidence at hearing in addition to evidence described in sections (1)-(4) of this rule and the Administrative Law Judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the other participant, the hearing may be continued upon request for sufficient time to allow the unwarned participant to review the evidence, and, if necessary, time to respond.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0150**

**Subpoenas**

(1) Unless limited by the Administrative Law Judge, the Committee and Apprentice may issue subpoenas in support of discovery. The Administrative Law Judge may issue subpoenas in support of discovery for any Apprentice not represented by counsel. Where the Committee issues a subpoena in support of discovery, the Committee shall notify the Apprentice of the possible sanction, pursuant to section (2) of this rule, for failure to provide the discovery subpoenaed.

(2) Where the Committee or Apprentice fails to comply with a subpoena within the time specified for production, the Administrative Law Judge may:

(a) Draw an adverse inference that the documents or testimony sought are unfavorable to the Committee or Apprentice subpoenaed; or

(b) Exclude the documents or testimony sought, if offered at hearing by the participant subpoenaed, when substantial prejudice is shown by the participant issuing the subpoena.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0160**

**Interpreters and Assistive Communication Devices**

(1) When a person who cannot speak or understand the English language, or who has a physical hearing impairment or physical speaking impairment, is involved in a contested case hearing, such person is entitled to a qualified interpreter or appropriate assistive communication device. All interpreters shall be appointed by the Administrative Law Judge. In order to obtain the services of an interpreter or to obtain an assistive communication device, a participant must notify the Administrative Law Judge no later than 10 days prior to hearing.

(2) Upon receipt of such a request, the Administrative Law Judge will arrange for the services of an interpreter or for the use of an assistive communication device. The Council shall compensate the interpreter and provide for the use of an assistive communication device at Council's expense, where necessary.

(3) Staff of the Bureau of Labor and Industries may serve as interpreter where the Apprentice consents and so states on the record.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0170**

**Responsibilities of the Administrative Law Judge**

Upon designation of an Administrative Law Judge, the Council delegates to the Administrative Law Judge the authority to:

- (1) Rule on all motions, subject only to section (8) of this rule;
- (2) Issue subpoenas in a manner consistent with ORS chapter 183;
- (3) Hold appropriate conferences, if necessary, before or during the hearing to discuss the conduct of the proceedings or the issues to be presented;
- (4) Regulate the course of the hearing including scheduling, reconvening, and adjourning;
- (5) Maintain order during the course of the hearing, including the authority to expel persons whose conduct is disruptive;
- (6) Question witnesses at the hearing and set time limitations for argument or presentation;
- (7) Limit or extend filing periods;
- (8) Decide procedural matters but not grant motions for summary judgment or other motions which involve final determination of the proceeding, but to issue a proposed order as provided for in these rules. Nothing in this section shall be construed to prohibit the Administrative Law Judge from making a routine disposition of a hearing proceeding based on a settlement, on the withdrawal of the Charging Document, or on other reasons not requiring a final order by the Council;
- (9) Make evidentiary rulings, with or without objection;
- (10) Allow discovery to the extent necessary and to limit, supervise and control discovery;
- (11) Take official notice of judicially recognizable facts and of general, technical or scientific facts;
- (12) Prepare a proposed order at the conclusion of the contested case hearing and send it to the Committee, the Council, and the Apprentice; and at the request of the Council, assist in responding to any exceptions and the preparation of the final order.
- (13) Take any other action consistent with the duties of an Administrative Law Judge.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0180**

**Conduct of Hearings**

- The hearing shall be conducted by and shall be under the control of the Administrative Law Judge designated by the Council. At the discretion of the Administrative Law Judge, the hearing, including telephone hearings, shall be conducted in the following manner:
- (1) The Administrative Law Judge shall open the hearing with a brief introduction of the Committee, the Apprentice and issues, including all information required by ORS 183.413(2) and ORS 183.415(7).
  - (2) The Apprentice and the Committee shall be given an opportunity to present a summary of the evidence and issues to be presented at the hearing.
  - (3) The Committee, through a Case Presenter or counsel, shall present evidence in support of the Charging Document.
  - (4) The Apprentice opposing the Charging Document shall present evidence in support of the Apprentice's position.
  - (5) The Committee and the Apprentice shall have the right to conduct cross-examination of adverse witnesses.
  - (6) The Committee and the Apprentice may present rebuttal evidence.
  - (7) The Committee and the Apprentice shall be given the opportunity to make a closing statement at the conclusion of the testimony.
  - (8) The Administrative Law Judge shall have the right to question any witness. The Administrative Law Judge may request the Committee or Apprentice to provide additional evidence, and may postpone the hearing where necessary, to allow the Committee or Apprentice the opportunity to gather and present the requested evidence.
  - (9) The Administrative Law Judge may, at his or her discretion, call the participants together before the hearing for a conference in order to ascertain what is disputed, hear argument upon motions, order discovery, or resolve procedural matters. At any time during the hearing, the Administrative Law Judge may recess the hearing in order to conduct such a conference. The results of any conference shall be summarized on the record, except that argument upon motions shall be recorded verbatim.
  - (10) Where the testimony of a witness who cannot be present at a hearing being conducted in person is necessary to the complete and fair adjudication of the case, the Administrative Law Judge may admit testimony of the witness by telephone. In such cases, the testimony of the witness must be broadcasted simultaneously to all participants and the Administrative Law Judge.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0190**

**Telephone Hearings**

Telephone hearings shall be conducted in the same manner as hearings held in person, except:



- (1) At least five days prior to commencement of a telephone hearing, the Apprentice and Committee shall provide to the Administrative Law Judge copies of documentary evidence which that participant will seek to introduce as evidence at hearing.
- (2) Nothing in this rule precludes an Apprentice or the Committee from seeking to introduce documentary evidence at hearing in addition to evidence described in section (1) of this rule and the Administrative Law Judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the Administrative Law Judge and to the other participant, the hearing may be continued upon request for sufficient time to allow the unwarned participant and the Administrative Law Judge to obtain and review the evidence.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0200**

**Evidence**

- (1) All evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs will be admissible.
- (2) Irrelevant, immaterial or unduly repetitious evidence may be excluded.
- (3) The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition. The burden of making a prima facie case rests with the Committee.
- (4) Any witness, including Committee staff, may submit evidence to the Administrative Law Judge.
- (5) All offered evidence to which there is no objection may be received by the Administrative Law Judge subject to the power of the Administrative Law Judge to exclude irrelevant, immaterial or unduly repetitious matter.
- (6) Evidence on which an objection is made may be taken by the Administrative Law Judge. Rulings on the admissibility or exclusion of this evidence will be made at the hearing or at the time the proposed order in the case is issued.
- (7) An affidavit or certificate may be offered and received with the same effect as oral testimony, provided the Administrative Law Judge determines that:
  - (a) The contents of the document are of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and,
  - (b) A participant requesting crossexamination of the document preparer would not suffer substantial prejudice by the lack of cross-examination.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0210**

**Stipulation**

The Committee and Apprentice may agree, by stipulation, upon all or some of the facts involved in the controversy, subject to the approval of the Administrative Law Judge. It shall be binding on those who agree to it and be regarded and used as evidence at hearing. The Administrative Law Judge will be bound by the facts set forth in the stipulation, but not by any conclusion drawn from those facts.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0220**

**Witnesses**

All testimony to be taken at the hearing, except matters officially noticed or entered by stipulation, shall be sworn or affirmed. This may include testimony given by affidavit.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0230**

**Ex Parte Communications**

The Administrative Law Judge shall place on the record a statement of the substance of any written or oral ex parte communication on a fact at issue made to the Administrative Law Judge while the proceeding is pending. Participants shall be given notice of such ex parte communication and of their right to rebut the substance of the ex parte communication on the record.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0240**

**Official Notice**

The Administrative Law Judge may take notice of judicially recognizable facts and of general, technical or scientific facts. Participants shall be given the opportunity to contest the fact so noticed.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0250**

**Record of Proceeding**

- (1) A verbatim, written and/or mechanical record shall be made which shall include:
  - (a) All pleadings, motions, correspondence, and rulings made by the Administrative Law Judge;
  - (b) Evidence received or submitted;
  - (c) Stipulations approved by the Administrative Law Judge;
  - (d) A statement of matters officially noticed;
  - (e) Questions asked, offers of proof and objections and rulings made during the hearing;
  - (f) A statement of any ex parte communications on a fact at issue made to the Administrative Law Judge;
  - (g) The proposed order by the Administrative Law Judge;
  - (h) Exceptions and written argument;
  - (i) The final order by the Council.
- (2) The record in the case does not close until the hearings unit has received all documents requested. The Administrative Law Judge shall determine the date upon which the record closed.
- (3) The written or mechanical record will not be transcribed unless requested for purposes of court review, following the filing of a Notice of Appeal.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0260**

**Proposed Orders**

- (1) The Administrative Law Judge shall prepare and serve upon the Council, Committee and Apprentice a proposed order which shall include the following:
  - (a) Rulings, motions or objections, including those rulings previously reserved;
  - (b) Findings of fact, including those matters which are either agreed to as fact at the hearing or by stipulation, or which, when disputed, are determined by the Administrative Law Judge to be a fact over contentions to the contrary;
  - (c) Conclusions of law;

- (d) An opinion explaining the rationale for the findings of fact and conclusions of law; and
- (e) An order setting forth the resolution suggested by the Administrative Law Judge.

(2) When the Administrative Law Judge serves the proposed order upon the participants, the Administrative Law Judge shall notify the participants that written exceptions must be filed within 10 days of the date of issuance of the proposed order. If the Administrative Law Judge requests additional documentation, the participants shall be notified of the date by which such requested brief or documentation is to be filed.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0270**

**Exceptions to Proposed Order**

- (1) Any participant may file specific written exceptions to the proposed order. Arguments to the Council concerning the exceptions will be allowed in writing only and must be submitted with the written exceptions. Any new facts presented or issues raised in such exceptions shall not be considered by the Council in preparation of the final order.
- (2) Exceptions filed by the Committee may include factual summaries, corrections, prior Council or Committee decisions, but may not include legal argument as defined in OAR 839-018-0120 unless the Committee is represented by counsel.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0280**

**Reopening the Contested Case Record**

The Administrative Law Judge shall reopen the record where the Administrative Law Judge determines additional evidence is necessary to fully and fairly adjudicate the case. In making this determination, the Administrative Law Judge shall consider whether the evidence suggested for consideration could have been gathered prior to the hearing.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0290**

**Retained Authority of the Council**

- (1) Council retains all authority in connection with a particular contested case proceeding not specifically delegated to

an Administrative Law Judge or to the Chair of the Council.

(2) The Council delegates to the Chair of the Council the authority to prepare and issue Final Orders by Default when the default is the result of an apprentice's failure to request a hearing and file an Answer.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0300**

**Final Order**

(1) On the basis of the record considered as a whole, the Council shall issue a final order in writing which includes findings of fact, conclusions of law, opinion and order. The final order shall also contain a notice that the final order may be appealed to the Oregon Court of Appeals.

(2) The final order may contain different findings, conclusions or interpretations of law than did the proposed order.

(3) The final order may provide for a different determination concerning cancellation of the apprenticeship agreement than did the proposed order.

(a) Where the final order reverses a proposed order in which cancellation was recommended, the Committee shall be directed to immediately reinstate the Apprentice;

(b) Where the final order reverses a proposed order in which cancellation was not recommended, the cancellation of the apprenticeship agreement shall be effective on the date of issuance of the final order.

(4) Participants to a contested case shall be served a copy of the final order by regular U.S. Mail.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0310**

**Default**

(1) Default can occur in two ways:

(a) Where an Apprentice has been served with a Charging Document and fails to file a request for hearing and Answer within the stated time limitation;

(b) Where an Apprentice has filed an Answer and requested a hearing pursuant to the Charging Document, and fails to appear at the scheduled hearing.

(2) Where an Apprentice fails to appear at the specified time and place for the contested case hearing, the Administrative Law Judge shall take evidence to establish a prima facie case in support of the Charging Document and shall then issue a proposed order to the Council and all participants pursuant to OAR 839-018-0260. Unless notified by

the Apprentice, the Administrative Law Judge shall wait no longer than 30 minutes from the time set in the Notice of Hearing for the hearing to commence.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996; f. & cert. ef. 12-17-96

**839-018-0320**

**Final Orders by Default**

- (1) A final order by default may be issued by the Chair when an Apprentice has been given an opportunity to file an Answer and request a hearing and has failed to do so within the specified time.
- (2) A final order by default may be issued only after a prima facie case of failure to comply with the minimum terms and conditions of the apprenticeship agreement is made on the record. A prima facie case may be made from the Committee file, if designated as the record in the Charging Document, provided that the Charging Document contained a statement advising the Apprentice that the failure to request a hearing would result in a final order.
- (3) The Apprentice and the Committee shall be served a copy of the final order by default by regular U.S. Mail.
- (4) Where an Apprentice has requested a hearing but fails to attend the hearing, the Council will issue a final order pursuant to OAR 839-018-0300, after receipt of a proposed order resulting from compliance with the procedures of OAR 839-018-0310(2).

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

**839-018-0330**

**Relief from Default**

- (1) The Council may, in its discretion and upon terms as may be just, at anytime within 10 days after the issuance of a final order or final order by default, relieve an Apprentice from the terms of the final order taken against the Apprentice where the Apprentice establishes that the default was the result of an excusable mistake or circumstances beyond the control of the Committee or Apprentice or the Council.
- (2) The request for relief shall be in writing directed to the Council and shall contain an affidavit, together with appropriate documentation, setting forth the facts supporting the alleged excusable mistake or circumstances beyond the control of the Committee or Apprentice or the Council.
- (3) Where relief from a final order or final order by default is granted by the Council, the Apprentice shall be directed to file an Answer and request a hearing, if not previously filed, and a hearing will be scheduled in due course.

Stat. Auth.: ORS 660.120(1)

Stats. Implemented: ORS 660.060(6) & (7)

Hist.: BL 13-1996, f. & cert. ef. 12-17-96

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**Oregon Administrative Rules  
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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 19**

**PROCEDURAL RULES**

**839-019-0000**

**Notice of Proposed Rules**

Prior to the adoption, amendment or repeal of any rule relating to civil penalties for child labor violation matters, the Wage and Hour Division of the Bureau of Labor and Industries shall give notice of intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date;
- (2) By mailing a copy of the notice of intended action to persons on the Wage and Hour Division's mailing list established pursuant to ORS 183.335;
- (3) By mailing a copy of the notice of intended action to:
  - (a) The United Press International;
  - (b) The Associated Press;
  - (c) Oregon Labor Press;
  - (d) Associated Oregon Industries;
  - (e) Associated General Contractors;
  - (f) Associated Builders and Contractors;
  - (g) The Oregon Farm Bureau;
  - (h) Restaurants of Oregon Association;
  - (i) Oregon Restaurant and Beverage Association;
  - (j) Oregon Gasoline Service Dealers Association;
  - (k) Persons on the Wage and Hour Commission's mailing list established pursuant to OAR 839-022-0000;



(l) Other persons, associations or labor unions as appropriate.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS Ch. 183

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**839-019-0002**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure under the Administrative Procedure Act, effective March 3, 1988, are hereby adopted by reference as permanent rules for civil penalties for child labor violation matters except that the Model Rules of Procedure shall not apply to contested cases conducted pursuant to ORS 653.365 to 653.370. The rules for contested case proceedings are set forth in OAR 839-030-0020 to 839-030-0200. Any matters not addressed in OAR 839-030-0020 to 839-030-0200 will be governed by the Model Rules of Procedure.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS Ch. 183 & 653

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**839-019-0004**

**Definitions**

As used in ORS 653.365 to 653.370 and in these rules, unless the context requires otherwise:

- (1) "Bureau" means the Bureau of Labor and Industries of the State of Oregon.
- (2) "Commission" means the Wage and Hour Commission of the State of Oregon.
- (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or the Commissioner's authorized deputies and officers.
- (4) "Employ" shall have the same meaning as that which appears in ORS 653.010(1).
- (5) "Employer" shall have the same meaning as that which appears in ORS 653.010(2).
- (6) "Employment Certificate" means the employment certificate issued to employers for the employment of minors pursuant to ORS 653.307 and the employment permit referred to in ORS 653.360.
- (7) "Minor" means any person under 18 years of age.
- (8) "Person" includes the term "employer" as defined in section (5) of this rule and school districts required to comply with ORS 653.307(3).
- (9) "Violation" means a transgression of any statute, rule or order, or any part thereof and includes both acts and omissions.
- (10) "Wilful" means intentional and includes failure to act. A person commits a wilful act when the person knows what

she/he is doing, intends to do what she/he is doing and is a free agent.

(11) "Work Permit" means the employment certificate issued to minors pursuant to ORS 653.307.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS 653.370

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**Civil Penalties for Child Labor Violations**

**839-019-0010**

**Violations for Which a Penalty May Be Imposed**

The Commissioner may impose a civil penalty for violations of any of the following statutes, administrative rules and orders:

- (1) Violation of any provision of ORS 653.305 to 653.370.
- (2) Violation of any provision of OAR 839-021-0001 to 839-021-0500.
- (3) Violation of any term or condition of an Order of the Wage and Hour Commission issued pursuant to any violation of ORS 653.305 to 653.370 and OAR 839-021-0001 to 839-021-0500.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS 653.370

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**839-019-0015**

**Violations Separate and Distinct**

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS 653.370

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**839-019-0020**

**Determination of the Amount of the Civil Penalty**

- (1) Except as provided in section (4) of this rule, when determining the amount of civil penalty to be imposed, the

Commissioner shall consider the following circumstances and shall cite those the Commissioner finds applicable:

- (a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes and rules;
- (b) Prior violations, if any, of statutes and rules;
- (c) The magnitude and seriousness of the violation;
- (d) The opportunity and degree of difficulty to comply;
- (e) Any other mitigating circumstances.

(2) It shall be the responsibility of the employer to provide the Commissioner with evidence of the mitigating circumstances set out in section (1) of this rule.

(3) In arriving at the actual amount of the civil penalty, the Commissioner shall consider whether the minor was injured while employed in violation of the statute and rules.

(4) Notwithstanding section (1) of this rule, in the case of a serious injury to or the death of a minor while employed in violation of the statutes or rules, the Commissioner may impose the maximum penalty allowed by ORS 653.370.

(5) Notwithstanding any other section of this rule, the Commissioner shall consider all mitigating and aggravating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be imposed.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS 653.370

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**839-019-0025**

**Schedule of Civil Penalties**

(1) The civil penalty for any one violation shall not exceed \$1,000. The actual amount of the civil penalty will depend on all the facts and any mitigating and aggravating circumstances.

(2) When the Commissioner determines to impose a civil penalty for the employment of a minor without a valid employment certificate, the minimum civil penalty shall be as follows:

- (a) \$100 for the first offense;
- (b) \$300 for the second offense;
- (c) \$500 for the third and subsequent offenses.

(3) The civil penalties set out in section (2) of this rule shall be in addition to any other penalty imposed by law or rule.

(4) When a minor incurs a serious injury or dies while employed in violation of any of the following statutes and rules, the violation is considered to be so serious and of such magnitude that the maximum penalty will be imposed when the Commissioner determines to impose a civil penalty:

- (a) Employment of a minor under 14 years of age in violation of ORS 653.320.
- (b) Employment of a minor in violation of ORS 653.330, 653.335, 653.340 or 653.360.

- (c) Employment of a minor in violation of OAR 839-21-097(1)(a), 839-021-0097(1)(c) or 839-021-0097(2).
  - (d) Employment of a minor in violation of OAR 839-021-0102 or OAR 839-021-0104.
  - (e) Employment of a minor in violation of OAR 839-021-0280(2) or 839-021-0282.
  - (f) Employment of a minor in the entertainment industry in violation of OAR 839-021-0355, Prohibited Performances.
- (5) Wilful and repeated violations of the provisions of ORS 653.305 to 653.370 or OAR 839-021-0001 to 839-021-0500 are considered to be of such seriousness and magnitude that no less than \$500 for each wilful or repeated violation will be imposed when the Commissioner determines to impose a civil penalty.
- (6) The civil penalty for all other violations shall be set in accordance with the determinations and considerations referred to in OAR 839-019-0020.

Stat. Auth.: ORS Ch. 651 & 653

Stats. Implemented: ORS 653.370

Hist.: BL 5-1988, f. & cert. ef. 4-12-88

**Exemptions**

**839-019-0100**

**Exemptions**

The provisions of OAR 839-019-0000 to 839-019-0025 do not apply when minors are employed under the following circumstances:

- (1) The minor is employed by the parent of the minor;
- (2) The minor is employed by a person standing in the place of the parent of the minor and who has custody of the minor.

Stat. Auth. ORS Ch. 651 & 653

Stats. Implemented: ORS 653.365 & 653.370

Hist.: BL 5-1988, f. & cert. ef. 4-12-88; BL 7-1997, f. & cert. ef. 11-13-97

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**Oregon Administrative Rules  
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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 20**

**PROCEDURAL RULES**

**839-020-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule relating to minimum wages, overtime and working conditions matters, the Bureau of Labor and Industries shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the mailing list established pursuant to ORS 183.335(7).
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
  - (a) Associated Press;
  - (b) The Northwest Labor Press;
  - (c) Associated Oregon Industries;
  - (d) Associated General Contractors;
  - (e) Oregon AFL-CIO;
  - (f) Oregon Restaurant Association;
  - (g) National Federation of Independent Business;
  - (h) Oregon Law Center, Inc.
  - (i) Oregon Legal Services Corporation
  - (j) Other associations and labor unions as appropriate.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS Ch. 183

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 9-1996, f. & cert. ef. 10-8-96

**839-020-0002**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, effective September 9, 1996, are hereby adopted by reference as permanent rules for minimum wages, overtime and working conditions matters except that the Model Rules of Procedure shall not apply to contested cases conducted pursuant to ORS 653.010 to 653.261. The rules for contested case proceedings are set forth in OAR 839-050-0000 to 839-050-0420. Any matters not addressed in OAR 839-050-0000 to 839-050-0420 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 183 & 653

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96

**839-020-0004**

**Definitions**

As used in ORS 653.010 to 653.261 and these rules, unless the context requires otherwise:

- (1) "Administrator" means the Administrator of the Wage and Hour Division.
- (2) "Adult" means an individual of 18 years of age or more.
- (3) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.
- (4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.
- (5) "Bureau" means Bureau of Labor and Industries.
- (6) "Casual basis" as used in ORS 653.020(2) and these rules means employment which is irregular and intermittent and which is not performed by an individual whose vocation is providing domestic services.
- (7) "Child care service person" means an individual who performs child care services in the home of the individual or the child and who during any part of a 24 hour period provides custodial care and protection to infants or children.
- (8) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (9) "Commission" means the Wage and Hour Commission.

- (10) "Commissions" or "pay on a commission basis" means payment based on a percentage of total sales, or of sales in excess of a specified amount, or on a fixed allowance per unit agreed upon as a measure of accomplishment or on some other formula and may be the sole source of compensation or payment in addition to other compensation.
- (11) "Companionship services", as used in ORS 653.020(14) and in these rules, shall mean those services which provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the elderly or infirm person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work: provided, however, that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the elderly or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a family home.
- (12) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.
- (13) "Domestic service" means services of a household nature performed by an employee in or about a family home (permanent or temporary) of the person by whom he/she is employed. The term includes, but is not limited to, employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, gardeners, and companions to the elderly and infirm.
- (14) "Domicile" means the permanent residence of a person or the place to which that person intends to return even though that person may actually reside elsewhere.
- (15) "Employed on a seasonal basis at", as used in ORS 653.020(10) and in these rules, means employment that occurs during the time the organized camp provides services to campers at the camp site where campers are located. The term includes employment at the camp site in duties preparatory to the opening or closing of the camp site. The term includes employment during the camping season only and does not include full time, year around employment.
- (16) "Employer" has the same meaning as that in ORS 653.010(4).
- (17) "Fair market value" means an amount not to exceed the retail price customarily paid by the general public for the same or similar meals, lodging or other facilities or services provided to the employee by the employer. In determining the fair market value of meals, lodging and other facilities and services, the Bureau will be guided by these rules and by Title 29, CFR Part 531 -- Wage Payments under the Fair Labor Standards Act of 1938, where applicable.
- (18) "Family home", as used in ORS 653.020(2) and this section, means a residence, the purpose of which is to provide an abode for the owner or renter of the residence and family members of the owner or renter. For example, a boarding house or an adult foster care home are not family homes for purposes of ORS 658.020(2) and these rules. However, when casual domestic service work is performed in structures where the owner or renter resides and operates a business, such work may qualify as exempt under ORS 653.020(2) depending upon all the facts of the particular arrangement.
- (19) "Homeworker" means any employee suffered or permitted to produce goods or services for an employer in or about a home, apartment or room in a residence in which that employee or other employees of an employer resides, regardless of the source of the materials used by the homeworker in such production.
- (20) "Hours worked" means all hours for which an employee is employed by and required to give to his/her employer and includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place and all time the employee is suffered or permitted to work. "Hours worked" includes "work time" as defined in ORS 653.010(12).
- (21) "Immediate family" means grandfather, grandmother, father, mother, son, daughter, sister, brother, uncle or aunt.
- (22) "Minimum wage" means the rate of pay prescribed in ORS 653.025, 653.029 and 653.030.



(23) "Minor" means an individual of 17 years of age or less.

(24) "Organized camp" has the same meaning as that in ORS 653.010(7).

(25) "Primary duty" means, as a general rule, the major part, or over 50 percent, of an employee's time. However, a determination of whether an employee has management as his/her primary duty must be based on all the facts of a particular case. Time alone is not the sole test and in situations where the employee does not spend over 50 percent of his/her time in managerial duties, he/she might have management as a primary duty if other pertinent factors support such a conclusion. Factors to be considered include, but are not limited to, the relative importance of the managerial duties as compared with other duties, the frequency with which the employee exercises discretionary powers the relative freedom from supervision and the relationship between the salary paid the employee and wages paid other employees for the kind of non-exempt work performed by the supervisor.

(26) "Primary school" means a learning institution containing any combination of grades Kindergarten - 8 or age level equivalent.

(27) "Reside" means a personal presence at some place of abode with no present intention of definite and early removal and with the intent to remain for an undetermined period, but not necessarily combined with the intent to stay permanently.

(28) "Resident manager" means an employee of an adult foster home who is domiciled at the home and who is directly responsible for the care of residents in the home on a day to day basis.

(29) "Salary" means a predetermined amount constituting all or part of the employee's compensation paid for each pay period of one week or longer (but not to exceed one month) and in no instance shall be any amount less than required to be paid pursuant to ORS 653.025.

(30)(a) "Salary basis" means a salary as defined in section (29) of this rule, which is not subject to deduction because of lack of work for part of a work week, however, deductions for absences of one day or more may be made if the employee is absent for other reasons. Deductions may not be made for absences of less than one day, except as permitted for employers covered by the federal Family and Medical Leave Act of 1993, Public Law 103-3, for part-day absences due to leave pursuant to that law. Employees who are not paid for work weeks in which they performed no work are considered to be on a salary basis provided they are paid on a salary basis in work weeks when work is performed.

(b) Payment of additional compensation is not inconsistent with the salary basis of payment.

(c) Compensation paid in the form of fees is not inconsistent with the salary basis of payment, provided the fees paid in each pay period are not less than the amount required to be paid pursuant to ORS 653.025 and meet the requirements for fee payments under the federal Fair Labor Standards Act, as stated in Title 29, Code of Federal Regulations, Parts 541.313 and 541.314 and related rules.

(31) "Secondary school" means a learning institution containing any combination of grades 9 - 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(32) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

(33) "Willfully" means knowingly. An action is done knowingly when it is undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of these rules, the employer is presumed to know the requirements of ORS 653.010 to 653.261 and these rules.

Stat. Auth.: ORS 653.040

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 3-1992, f. & cert. ef. 3-2-92; BL 5-1993(Temp), f. 5-7-93, cert. ef. 5-14-93; BL 12-1993, f. 10-29-93, cert. ef. 11-1-93; BL 9-1996, f. & cert. ef. 10-8-96; BL 9-1997, f. & cert. ef. 11-13-97

**839-020-0005**

**Employees Engaged in Administrative, Executive, Professional, or Outside Sales Work, Defining the Terms**

As used in ORS 653.010 to 653.261 and in these rules, unless the context requires otherwise:

(1) "Executive Employee" means any employee:

(a) Whose primary duty consists of the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof. The foregoing language of this paragraph prescribing the primary duty shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment or who owns at least 20 percent interest in the enterprise in which he/she is employed; and

(b) Who customarily and regularly directs the work of two or more other employees therein; and

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion of any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who earns a salary and is paid on a salary basis pursuant to ORS 653.025 exclusive of board, lodging, or other facilities.

(2) "Administrative Employee" means any employee:

(a) Whose primary duty consists of either:

(A) The performance of office or non-manual work directly related to management policies or general business operations of his/her employer or his/her employer's customers; or

(B) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.

(b) Who customarily and regularly exercises discretion and independent judgment; and

(c)(A) Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or

(B) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge, or;

(C) Who executes under only general supervision special assignments and tasks; and

(d) Who earns a salary and is paid on a salary basis pursuant to ORS 653.025 exclusive of board, lodging, or other facilities.

(3) "Professional Employee" means any employee:

(a) Whose primary duty consists of the performance of:

(A) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(B) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(C) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in the school system or educational establishment or institution by which he/she is employed; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who earns a salary and is paid on a salary basis pursuant to ORS 653.025 exclusive of board, lodging, or other facilities.

(4) "Outside Sales Person" means any employee:

(a) Who is employed for the purpose of and who is customarily and regularly engaged away from his/her employer's place or places of business in:

(A) Making sales; or

(B) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and

(b) Whose hours of work of a nature other than that described in paragraph (a)(A) or (B) of this section do not exceed 30 percent of the hours worked in the workweek by non-exempt employees of the employer: Provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as non-exempt work.

(5) "Independent Judgment and Discretion" means the selection of a course of action from a number of possible alternatives after consideration of each, made freely without direction or supervision with respect to matters of significance. It does not include skill exercised in the application of prescribed procedures.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90

## Payment of Minimum Wages

**839-020-0010**

**Payment of Minimum Wages - Generally**

(1) Employees shall be paid no less than the applicable minimum wage for all hours worked, which includes "work time" as defined in ORS 653.010(12). If in any pay period the combined wages of the employee are less than the applicable minimum wage, the employer shall pay, in addition to sums already earned, no less than the difference between the amounts earned and the minimum wage as prescribed by the appropriate statute or administrative rule.

(2) Employers may include commission and bonus payments to employees when computing the minimum wage. Such commission or bonus payment may only be credited toward employees' minimum wages in the pay periods in which they are received.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.025

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96

**839-020-0012**

**Wage Statements to be Provided to Employees**

(1) Except for employees who are otherwise specifically exempt under ORS 653.020, employers shall furnish each employee, each time the employee receives a compensation payment from the employer, a written itemized statement of earnings. The written itemized statement shall include:

- (a) The total gross payment being made;
- (b) The amount and a brief description of each and every deduction from the gross payment;
- (c) The total number of hours worked during the time covered by the gross payment;
- (d) The rate of pay;
- (e) If the worker is paid on a piece rate, the number of pieces done and the rate of pay per piece done;
- (f) The net amount paid after any deductions;
- (g) The employer's name, address and telephone number;
- (h) The pay period for which the payment is made.

(2) When a compensation payment is a draw or advance against future earnings, and no deductions are being made from the payment, the written itemized statement shall include the information required in section (1)(a), (g) and (h) of this rule. The employee shall be provided with a statement containing all of the information required by section (1) of this rule at the employee's next regular payday, even if the employee is not entitled to payment of any further wages at that time.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 652.610, 652.640

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

## 839-020-0013

### **Bonuses Provided to Workers in Agriculture**

(1) Every producer, or agent of the producer, who employs a labor contractor to provide a working crew for harvesting perishable agricultural products or who offers a bonus to those persons who harvest perishable agricultural products shall cause to be conspicuously posted and maintained on the premises where the agricultural products are to be harvested, a notice that states:

(a) A description of the terms and conditions of any bonus offered, including the manner of determining when the bonus is earned; and

(b) That portion of the labor contractor's compensation that is based on the amount of work done by each employee of the labor contractor.

(2) Such notice must be written in the language customarily used by the employer or its agents to communicate with a worker.

(3) The notice must be distributed in writing to workers, if required by ORS 658.440 (1)(f) or any other law.

(4) Any condition that has not been properly disclosed in the manners described above cannot be enforced against any worker to deny or diminish the amounts to which the worker would otherwise be entitled.

Stat. Auth.: ORS 651.060

Stats. Implemented: ORS 652.635

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

## 839-020-0015

### **Fixed Minimum Hourly Wage Rates Lower Than the Minimum Wage Rate**

(1) Pursuant to ORS 653.025 and 653.030 the Commissioner will consider the employment of specific types of persons or of individual persons themselves at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025, when the Commissioner has determined that the application of these requirements would substantially curtail employment opportunities for the specific types of persons or individuals involved. The types of persons for whom a lower rate may be set upon a showing of good cause as set out below include, but are not limited to, the mentally and physically handicapped who cannot perform all of the bona fide job requirements within a reasonable period of time expected of those at the entry level and student learners as defined in ORS 653.070.

(2) Rules for the employment of specific named individuals at less than the minimum wage:

(a) An employer shall submit an application for the payment of a fixed minimum hourly wage rate lower than the rate required by ORS 653.025 on a form provided by the Commissioner stating each and every reason why the employer believes a lower rate should be established. Forms may be obtained at any office of the Bureau of Labor and Industries;

(b) The application form shall be signed by the employer, the prospective employee and legal guardian, or person legally empowered to act for such employee to whom the lower wage rate is proposed to be paid;

(c) The Commissioner may require additional information from the employer or prospective employee to verify the conditions or reasons specified in the application including, but not limited to, medical reports;

(d) In considering the application, the Civil Rights Division of the Oregon Bureau of Labor and Industries, or other appropriate governmental agencies may be consulted for technical assistance to reasonably assure that no approval will be granted that will conflict with the rights of workers under other laws;

(e) The Commissioner shall grant the application only when he/she has determined that the application of ORS 653.025 would substantially curtail opportunities for employment of the prospective employee named in the application. The application may be granted under such terms and conditions as the Commissioner deems appropriate;

(f) The Commissioner shall consider each application on an individual basis and shall not grant blanket authorization in advance for a specific type or group of persons unless the conditions set out in section (3) of this rule are met.

(3) Rules for general authorization for an employer to employ unnamed mentally or physically handicapped individuals at less than the minimum wage:

(a) Under certain circumstances, the Commissioner may grant blanket approval for an employer to employ persons who are mentally or physically handicapped or others when good cause is shown at a fixed minimum hourly wage rate lower than the rate required by ORS 653.025. An example when blanket approval may be given includes, but is not limited to, nonprofit sheltered workshops organized and conducted for the education and training of the mentally and physically handicapped;

(b) An employer desiring blanket authority to employ mentally or physically handicapped individuals at less than the minimum wage shall apply to the Commissioner for such authority;

(c) The application should include:

(A) The name of the organization;

(B) The purpose for which it was created;

(C) A detailed statement of the organization and its activities;

(D) The method and procedure by which the applicant obtains its employees;

(E) A detailed statement of the duties the employees will perform and a description of the end product produced from the performance of such duties;

(F) The hours the employees will work;

(G) How many individuals it intends to employ under authorization, if granted, and for how long;

(H) The rate of pay it will pay such individuals if authorization is granted.

(d) The applicant shall be required to submit such other information as the Commissioner deems necessary;

(e) The Commissioner shall grant the application only when it has determined that the application of ORS 653.025 would substantially curtail opportunities for employment;

(f) If the Commissioner grants the application he/she may do so under such terms and conditions as the Commissioner deems appropriate;

(g) Employers operating "nonprofit sheltered workshops" which are organized and conducted for the education and training of the mentally and physically handicapped, who desire blanket authorization to pay less than the minimum wage required by ORS 653.025, shall apply for such authorization to the U.S. Department of Labor, Wage and Hour Division, Federal Office Building, 1111 Third Avenue, Suite 600, Seattle, WA 98101-3212, utilizing the application procedures set out in **Title 29, CFR, Part 525**. Pursuant to an agreement with the U.S. Department of Labor, the

Commissioner may review the applicatory material submitted to the U.S. Department of Labor. The employer will be notified whether it may pay less than the minimum wage required by ORS 653.025 at the same time it is notified by the Department of Labor pursuant to the federal regulations.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.030

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90

**Deduction from the Minimum Wage**

**839-020-0020**

**Deductions -- Generally**

Employers may not deduct the cost of any of the following items from the minimum wage:

- (1) Tools.
- (2) Equipment.
- (3) Uniforms, including but not limited to garments such as suits, dresses, aprons, and all other garments whatsoever as worn by the employees as a condition of employment. Such apparel of a similar design, color, or material or forming part of the decorative pattern of the establishment or distinguishing the employee as an employee of the concern is presumed to be worn as a condition of employment.
- (4) Laundry or cleaning of uniforms.
- (5) Maintenance of tools, equipment or uniforms.
- (6) Breakage or loss of tools, equipment or uniforms.
- (7) Any other item required by the employer to be worn or used by the employee as a condition of employment.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.025

Hist.: BL 1-1987, f. & ef. 1-12-87

**839-020-0025**

**Deductions for Meals, Lodging, Facilities or Other Services**

- (1) The fair market value of meals, lodging and other facilities or services furnished by the employer to the employee for the private benefit of the employee may be deducted from the minimum wage. The employer has the burden of establishing the fair market value (See also OAR 839-020-0004(16)).

(2) "Fair market value" may be established in either of the following ways:

(a) The amount actually and customarily charged for comparable meals, lodging, facilities or services to consumers who are not employees of the employer; or

(b) The actual cost to the employer in purchasing, preparing or providing the meals, lodging or other facilities or services.

(3) The provisions of section (1) of this rule do not prohibit the payment of wages as meals, lodging and other facilities or services furnished to employees either as additions to wages or as items for which deductions from wages will be made. These provisions apply to all facilities or services furnished by the employer as compensation to the employee regardless of whether the employer calculates charges for such facilities or services as additions to or deductions from wages. In order for the employer to be able to claim credit toward the minimum wage for providing meals, lodging or other facilities or services furnished to an employee, the deduction of these costs from the employee's wages must have been authorized by the employee in writing, the deduction must have been for the private benefit of the employee, and the deduction must be recorded in the employer's books, or the deduction of these costs must be authorized by a collective bargaining agreement, in accordance with the provisions of ORS 652.610.

(4) Full settlement of sums owed to the employer by the employee because of meals, lodging and other facilities or services furnished by the employer shall be made on each regular payday.

(5) The provisions of section (1) of this rule apply only when the following conditions are continuously met:

(a) The employer has met the conditions of ORS 652.610(3); and

(b) The employee actually receives the meals, lodging or other facilities or services; and

(c) The meals, lodging or other facilities or services are furnished by the employer for the private benefit of the employee; and

(d) The meals, lodging or other facilities and services are provided in a lawful manner. No deduction from the minimum wage may be made for alcohol provided without applicable permits, for illegal substances or services, such as drugs or prostitution, or for any other substance, facility or service which is provided in a manner determined by a court or appropriate administrative agency to have been unlawful.

(6) As used in this rule, meals actually received by the employee and furnished by the employer are regarded as being for the private benefit of the employee except when meal expenses are incurred by an employee while traveling away from the employee's home on the employer's business.

(7) Lodging or other facilities or services are furnished for the private benefit of the employee when such lodging or other facilities or services are not required by the employer. For purposes of this rule, lodging or other facilities or services are required by the employer when:

(a) Acceptance of the lodging or other facilities or services is a condition of the employee's employment; or

(b) The expense is incurred by an employee who must travel away from the employee's home on the employer's business; or

(c) The acceptance of the lodging or other facilities or services is involuntary or coerced; or

(d) The provision of lodging or other facilities or services is necessary in order for the employer to maintain an adequate work force at the times and locations the employer needs them.

Stat. Auth.: ORS 651.060(4) & Ch. 653

Stats. Implemented: ORS Ch. 653



Hist.: BL 1-1987, f. & ef. 1-12-87; BL 5-1991(Temp), f. 5-15-91, cert. ef. 5-17-91; BL 3-1992, f. & cert. ef. 3-2-92; BL 9-1996, f. & cert. ef. 10-8-96

## Payment of Overtime Wages

### 839-020-0030

#### Overtime -- Generally

(1) Except as provided in OAR 839-020-0100 to 839-020-0135 all work performed in excess of forty (40) hours per week must be paid for at the rate of not less than one and one-half times the regular rate of pay when computed without benefits of commissions, overrides, spiffs, bonuses, tips or similar benefits pursuant to ORS 653.261(1). Similar benefits include, but are not limited to, discretionary bonuses, gifts, profit sharing, thrift and savings program, trusts, reimbursements for expenses, holiday, or vacation pay.

#### (2) Definitions:

(a) "Work week" means any seven (7) consecutive twenty four (24) hour period as determined by the employer. The beginning of the work week may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this rule. For purposes of overtime computation, each work week stands alone;

(b) "Regular rate", for purposes of overtime computation means a regular hourly rate, but in no case shall the regular hourly rate be less than the applicable statutory minimum wage rate. In the absence of an express agreement between the employer and the employee which specifies the regular hourly rate, the regular hourly rate is determined by dividing the total remuneration for employment in any work week (excluding commissions, spiffs, bonuses, tips or similar benefits), by the total number of hours actually worked in that work week for which such remuneration was paid. The division will be guided in the application and calculation of regular rate by **Title 29, Code of Federal Regulations, Part 778, Subpart C and D** except when expressly prohibited by ORS Chapter 653 or these rules.

#### (3) Methods for determining amount of overtime payment under different compensation agreements:

##### (a) Compensation based exclusively on hourly rate of pay:

(A) Where the employee is employed solely on the basis of a single hourly rate, the hourly rate is the "regular rate". For hours worked in excess of forty (40) hours in a work week the employee must be paid, in addition to the straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of forty (40);

(B) For example, a \$7 per hour rate will bring, for an employee who works 46 hours, a total weekly wage of \$343 (46 hours at \$7 plus six hours at \$3.50). In other words the employee must be paid an amount equal to \$7 per hour for 40 hours and \$10.50 per hour for the six hours of overtime, or a total of \$343.

##### (b) Compensation based upon piece-rate agreement:

(A) Where an employee is employed on a piece-rate basis, the regular hourly rate of pay is determined by adding together the total earnings, (excluding commissions, spiffs, bonuses, tips or similar benefits) for the work week and dividing this sum by the number of hours worked in the week for which such compensation is to be paid;

(B) For example, an employee who has earned \$350 during a 50 hour work week must be paid an additional sum of \$35 for the ten overtime hours, or a total of \$385 (50 hours at \$7 per hour and the ten overtime hours at \$3.50 per hour).

(c) Compensation based upon weekly salary agreement for regular work week of less than 40 hours:

(A) Where the employee is employed on a weekly salary, the regular hourly rate of pay is determined by dividing the salary by the number of hours agreed to be worked in the work week which such salary is intended to compensate;

(B) For example, if an employee is hired at a salary of \$245 and it is understood that this salary is compensation for a regular work week of 35 hours, the employee's regular rate of pay is \$7 per hour (\$245 divided by 35 hours). Thus, where the employee works in excess of 35 hours in a given work week such employee must be paid \$7 per hour for each of the first 40 hours and \$10.50 per hour (one and one-half times \$7) for each hour worked in excess of 40 hours in such work week.

(d) Compensation based upon a weekly salary agreement for a regular work week of 40 hours:

(A) Where the employee is employed on a weekly salary, the regular hourly rate of pay is computed by dividing the salary by the number of hours which the salary is intended to compensate;

(B) For example, where an employee is hired at a salary of \$280 and it is understood that this weekly salary is compensation for a regular work week of 40 hours, the employee's regular rate of pay is \$7 per hour and such employee must be compensated at the rate of \$10.50 per hour for each hour worked in excess of 40 hours in such work week.

(e) Compensation based upon weekly salary agreement for regular work weeks of more than 40 hours:

(A) If the employee is employed on a weekly salary, which is the agreed compensation for a set number of hours in excess of 40, the regular hourly rate of pay is determined by dividing the weekly salary by the set number of hours which such salary is intended to compensate;

(B) For example, where an employee is hired at a weekly salary of \$315 and it is understood that this weekly salary is compensation for a regular work week set at 45 hours, the employee's regular rate of pay is \$7 per hour and such employee must be paid an additional sum of \$17.50 for such work week or a total of \$332.50 (45 hours at \$7 per hour and the five overtime hours at \$3.50 per hour). The employee must be paid an additional \$10.50 per hour for each hour worked in excess of 45 hours in such work week.

(f) Compensation based upon an agreed fixed salary for fluctuating hours (fluctuating workweek method for payment of overtime):

(A) An employee employed on a fixed salary may have hours of work which vary from work week to work week and the salary may be paid to the employee pursuant to an understanding with the employer that such employee will receive such fixed amount of compensation for whatever hours the employee is called upon to work in a work week, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation for the hours worked each work week, whatever their number, such a salary arrangement is permitted if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable statutory minimum wage rate for every hour worked in those work weeks in which the number of hours worked is greatest, and if the employee receives overtime compensation, in addition to such salary, for all hours worked in excess of 40, at a rate not less than one-half the regular rate of pay. Since, under such an arrangement, the number of hours actually worked will fluctuate from work week to work week, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the work week into the amount of the salary to obtain the applicable regular hourly rate for any given work week. Payment for overtime hours worked in excess of 40 hours in such work week at one-half such hourly rate in addition to the salary satisfies the requirements of this rule because such hours have already been compensated at the regular rate, under the salary arrangement. The following examples, based upon a weekly salary of \$400, are offered by way of illustration:

(i) Work week #1 -- 50 hours worked; the employee's regular rate of pay is \$8 per hour and the employee must be paid an additional sum equal to one-half the regular rate times the ten overtime hours worked or \$40, making the total compensation for that work week \$440;

(ii) Work week #2 -- 60 hours worked; the employee's regular rate of pay is \$6.67 per hour and the employee must be paid an additional sum equal to one-half the regular rate times the 20 overtime hours worked or \$66.67 making the total compensation for that work week \$466.67.

(B) The fluctuating work week method for the payment of overtime does not apply to employers covered by the federal Family Medical Leave Act of 1993, 29 USC 2601, et. seq., who comply with the Code of Federal Regulations regarding the nonpayment of leave time authorized by the Act and the special exception pertaining to the payment of overtime under the fluctuating workweek method. (See 29 CFR, Part 825.206 (b) and (c)) Employers who select this method for paying overtime and who are covered by this Act but choose not to comply with 29 CFR 825.206, shall comply with this rule.

(g) Fixed salary for periods other than work week: Where a salary covers a period longer than a work week, such as a month, it must be reduced to its work week equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wages by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular rate of pay and the amount of any overtime pay is determined as provided by this rule.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 9-1996, f. & cert. ef. 10-8-96

**Hours Worked**

**839-020-0040**

**Hours Worked -- Generally**

- (1) OAR 839-020-0040 to 839-020-0047 deals with hours worked as defined by OAR 839-020-0004(17) and discusses principles involved in determining what constitutes working time for purposes of ORS 653.010 to 653.261 and these rules.
- (2) Work requested or required is considered work time. Work not requested, but suffered or permitted is considered work time.
- (3) Work performed for the employer but away from the employer's premises or job site is considered work time. If the employer knows or has reason to believe that work is being performed, the time spent must be counted as hours worked.
- (4) It is the duty of the employer to exercise control and see that the work is not performed if it does not want the work to be performed. The mere promulgation of a policy against such work is not enough.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90

**839-020-0041**

**Waiting Time**

- (1) On duty (engaged to wait): Where waiting is an integral part of the job, i.e., when the time spent waiting belongs to and is controlled by the employer and the employee is unable to use the time effectively for his/her own purposes that employee will be considered as engaged to wait. All time spent in activity where an employee is engaged to wait will be considered as part of hours worked.
- (2) Off duty (waiting to be engaged): Periods during which an employee is completely relieved from duty and which are long enough to enable him/her to use the time effectively for his/her own purposes are not hours worked. He/She is not completely relieved from duty and cannot use the time effectively for his/her own purposes unless he/she is told in advance that he/she may leave the job and that he/she will not have to commence work until a specified hour has arrived. Whether the time is long enough to enable him/her to use the time effectively for his/her own purposes depends upon all of the facts and circumstances of the case.
- (3) On-call time: An employee who is required to remain on-call on the employer's premises or so close thereto that he/she cannot use the time effectively for his/her own purposes is working while "on-call". An employee who is not required to remain on the employer's premises but is merely required to leave word at his/her home or with company officials where he/she may be reached is not working while on-call.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90

**839-020-0042**

**Sleeping Time and Certain Other Activities**

Under certain conditions an employee is considered to be working even though some of his/her time is spent in sleeping or in certain other activities:

- (1) Less than 24 hours duty: An employee who is required to be on duty for less than 24 hours is working even though he/she is permitted to sleep or engage in other activities when not busy.
- (2) Duty of 24 hours or more: Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleep period. If sleeping period is of more than eight hours, only eight hours will be credited. Where no expressed or implied agreement to the contrary is present, the eight hours of sleeping time and lunch periods constitute hours worked:
- (a) Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable sleep period, the entire period must be counted;
- (b) For purposes of this rule a reasonable night's sleep is considered sleep time of not less than five continuous hours.
- (3) Employees residing on employers' premises or working at home: An employee who resides on his/her employer's premises on a permanent basis or for extended periods of time is not considered as working all the time he/she is on the premises. Ordinarily, he/she may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when he/she may leave the premises for purposes of his/her own. To determine the exact hours worked, any reasonable agreement of the parties which takes into

consideration all of the pertinent facts will be accepted.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**839-020-0043**

**Preparatory and Concluding Activities**

(1) Preparatory and concluding activities are considered hours worked if the activities performed by the employee are an integral and indispensable part of a principal activity for which he/she is employed:

- (a) Example: A bank teller counts his/her till and arranges his/her work space in preparation for receiving customers. This activity is an integral and indispensable part of the principal activity for which he/she is employed and is included as hours worked;
- (b) Example: In connection with the operation of a lathe, the lathe operator oils, greases, or cleans the machine or installs a new cutting tool. Such activities are an integral and indispensable part of a principal activity and are included as hours worked;
- (c) Example: Agricultural workers must dress in protective clothing and thoroughly clean up after their work with or around pesticides. The time spent in these activities is work time.

(2) These rules are applicable even where there exists a custom, contract or agreement not to pay for the time spent in such activity.

(3) Where a contract, custom or practice dictates certain activities to be considered as work time, even though not considered to be an integral and indispensable part of a principal activity, the time devoted to such activities, shall, notwithstanding, be considered as work time.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**839-020-0044**

**Lectures, Meetings and Training Programs**

(1) Attendance at lectures, meetings, training programs and similar activities need not be counted as work time if the following four criteria are met:

- (a) Attendance is outside of the employee's regular working hours;
- (b) Attendance is voluntary;
- (c) The course, lecture, or meeting is not directly related to the employee's job; and
- (d) The employee does not perform any productive work during such attendance.

(2) Involuntary attendance: Attendance is not voluntary if it is required by the employer. It is not voluntary in fact, if the employee is given to understand or led to believe that his/her present working conditions or the continuance of his/her employment would be adversely affected by non-attendance.

(3) Training is directly related to an employee's job if it is designed to make the employee handle his/her job more effectively as distinguished from training the employee for another job or teaching the employee a new additional skill in the same job.

(4) Independent training is time spent by the employee on his/her own initiative attending an independent school, college, or independent trade school after hours. Time spent in this activity is not considered hours worked for an employer even if the courses are related to the employee's job.

(5) Special situations: There are special situations where the time spent in attending lectures, training sessions and courses of instruction is not regarded as hours worked. For example, an employer may establish for the benefit of its employees a program of instruction which corresponds to courses offered by independent bona fide institutions of learning. Voluntary attendance by an employee at such courses outside of working hours would not be hours worked even if they are directly related to his job, or paid for by the employer.

(6) Time spent in an organized program of related, supplemental instruction by employees working under bona fide apprenticeship programs may be excluded from working time if the following criteria are met:

(a) The apprentice is employed under a written apprenticeship agreement or program which meets the standards of and is registered with the Bureau of Labor and Industries, Apprenticeship and Training Division; and

(b) Such time does not involve productive work or performance of the apprentice's regular duties. If the above criteria are met, the time spent in such related supplemental training shall not be counted as hours worked unless the written agreement specifically provides that it is hours worked. The mere payment or agreement to pay for time spent in related instruction does not constitute an agreement that such time is hours worked.

(7) Time spent in required training outside regular working hours at specialized or follow up training which is required for certification of employees by any law or ordinance does not constitute compensable hours of work. The time spent in training as provided in this subsection is not compensable, even if all or part of the cost of training is borne by the employer.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS Ch. 653

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 9-1996, f. & cert. ef. 10-8-96

## **839-020-0045**

### **Travel Time**

(1) Home to work in an ordinary situation: An employee who travels from home before his/her regular workday and returns to his/her home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment, whether he/she works at a fixed location or at different job sites. Normal travel from home to work is not work time.

(2) Home to work in an emergency situation: If an employee has left the employer's premises or job site after completing his/her day's work and is subsequently called out to travel a substantial distance to perform an emergency job, any time spent in excess of time spent in normal home-to-work travel shall be considered working time. Call-backs which require only normal home-to-work travel to the employer's place of business or job site will not be considered

working time. For purposes of this section, "substantial distance" means a distance beyond a 30-mile radius of the employer's place of business.

(3) Travel that is all in a day's work: Time spent by an employee in travel as part of his/her principal activity must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there or to pick up and carry tools, the travel from the designated place to the work place is part of the day's work and must be counted as hours worked regardless of any contract, custom or practice:

(a) Example: A construction worker who travels from job site to job site during the work day must be compensated for time spent in traveling;

(b) Example: If an employee who normally finishes his/her work on the employer's premises at 5 p.m. is sent to another job at a different site, finishes that job at 8 p.m. and is then required to return to the employer's premises arriving at 9 p.m., he/she will be compensated for all time up to 9 p.m. However, if the employee goes home instead of returning to the employer's premises, his/her travel after 8 p.m. is considered normal work to home travel and is not compensable.

(4) Home to work on special one-day assignment to another city: An employee who regularly works at a fixed official work station, if given an assignment to work in another city outside of a 30 mile radius of the official work station where normally employed, and not required to stay over night, must be paid travel time pursuant to section (3) of this rule. This time is considered an integral part of a principal activity.

(5) Travel away from the home community: Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is work time when it cuts across the employee's workday. The employee is substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on non-working days. Time that is spent in travel away from home outside of regular work hours as a passenger on an airplane, train, boat, bus, or automobile is not considered work time.

(6) When a private automobile is used in travel away from the home community: If an employee is offered public transportation but requests permission to drive his/her own car instead, the employer may count as hours worked either the time spent driving the car or the time he/she would have had to count as hours worked during working hours if the employee had used the public conveyance.

(7) Work performed while traveling includes any work which an employee is required to perform while traveling and must be counted as hours worked. An employee who drives a truck, bus, automobile, boat or airplane, or an employee who is required to ride therein as an assistant or helper, is working while riding, except during bona fide meal periods or when he/she is permitted to sleep in adequate facilities furnished by the employer.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

## **839-020-0046**

### **Adjusting Grievances, Medical Attention, Civic and Charitable Work and Suggestion Systems**

(1) Time spent in adjusting grievances between an employee and employer during the time employees are required to be on the premises is hours worked, but in the event a bona fide union is involved the counting of such time will be left to the process of collective bargaining or to the custom or practice under the collective bargaining agreement.

(2) Time spent by an employee in waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he/she is working constitutes hours worked.

- (3) Time spent in work for public or charitable purposes at the employer's request, or under its direction or control, or while the employee is required to be on the premises, is working time. Time spent voluntarily in such activities outside of the employee's normal working hours is not hours worked.
- (4) Time spent by employees outside of their regular working hours in developing suggestions under a general suggestion system is not working time, but if employees are permitted to work on suggestions during regular working hours the time spent must be counted as hours worked. When an employee is assigned to work on the development of a suggestion, the time is considered hours worked.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**839-020-0047**

**Agricultural Employees**

The provisions of OAR 839-020-0040 to 839-020-0047 apply to all persons employed in Agriculture who are required to be paid minimum wages pursuant to ORS 653.025.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.025

Hist.: BL 10-1990, f. & cert. ef. 7-26-90

**Working Conditions**

**839-020-0050**

**Meal and Rest Periods**

- (1) Every employer shall provide to each employee an appropriate meal period and an appropriate rest period.
- (2) "Appropriate meal period" means:
- (a) A period of not less than 30 minutes for each work period of not less than six or more than eight hours for a meal to be taken between the second and fifth hour worked (if the work period is seven hours or less) or between the third and sixth hour worked (if the work period is more than seven hours) and during which the employee is relieved of all duties; or
- (b) A period in which to eat for each work period of not less than six or more than eight hours while continuing to perform duties or remain on call, which is not deducted from the employee's hours worked. This is permitted only in those cases where the employer can show that the nature or circumstances of the work prevent the employee from being relieved from all duty;
- (c) Where the employer can show that industry practice or custom has established a paid meal period of less than 30 minutes (but no less than 20 minutes) during which employees are relieved of all duty, such industry practice or custom shall satisfy the meal period provisions of section (1) of this rule;



(d) For the purposes of subsection (2)(b), and sections (3) and (5) of this rule factors to be considered in determining the nature or circumstances of work which prevent an employee being

relieved of all duties or the scheduling of regular meal and rest periods may include, but are not limited to, the following: The safety and health of employees, patients, clients, and the public; availability of other employees to provide relief; qualifications (or lack thereof) of those available to provide relief; costs involved in the shutdown/startup of machinery in continuous-operation industrial processes; intermittent and unpredictable work flow not in the control of the employer/employee; unforeseeable equipment failures, emergencies, acts of nature.

(3) "Appropriate rest period" means: A period of rest of not less than ten minutes without deduction from the employee's pay for every segment of four hours or major part thereof worked in one work period. Said period of rest shall be in addition to and taken separately from the time allowed for the usual meal period. Insofar as feasible, considering the nature and circumstances of the work, such period of rest is to be taken by an employee approximately in the middle of each segment of the work period, but in no case is this time to be added to the usual meal period or deducted from the beginning or end of the work period to reduce the overall length of the total work period.

(4) The provisions of section (1) of this rule regarding appropriate rest periods do not apply when all of the following conditions are met:

(a) The employee is 18 years of age or older; and

(b) The employee works less than five hours in any period of 16 continuous hours; and

(c) The employee is working by himself/herself; and

(d) The employee is employed in a retail or service establishment, i.e., a place where goods and services are sold to the general public, not for resale; and

(e) The employee is allowed to leave his/her assigned station when the employee must relieve himself/herself of body wastes.

(5) In the absence of regularly scheduled rest periods and meal periods, it shall be sufficient compliance with section (1) of this rule when the employer can show that the employee has, in fact, received the time specified. This is permitted only in those cases where the employer can show that the ordinary nature and circumstances of the work prevent the employer from establishing and maintaining a regularly scheduled rest period and meal period.

(6) As used in this rule, "work period" means the period between the time the employee begins work and the time the employee ends work, and includes rest periods, meal periods and any period of one hour or less during which the employee is relieved of all duties.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96

## **839-020-0060**

### **Weight Lifting**

No employee shall be required to lift excessive weights.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.261(1)

Hist.: BL 1-1987, f. & ef. 1-12-87

**839-020-0065**

**Other Working Conditions**

(1) No employer shall employ or shall suffer or permit any employee to work in the State of Oregon, except under the following conditions:

- (a) Where a sanitary and safe work area is provided;
- (b) Where adequate lighting is provided;
- (c) Where adequate ventilation is provided;
- (d) Where adequate washrooms are provided;
- (e) Where adequate toilet facilities are provided;
- (f) Where the employer is in full compliance with the provisions of ORS Chapter 654 (the Oregon Safe Employment Act) and the rules and regulations promulgated thereunder. For the purposes of this rule, the compliance status of an employer is determined by the Occupational Safety and Health Division of the Department of Insurance and Finance;
- (g) Where, if provided, the cot or stretcher to be used in illnesses, accidents, or other emergencies is adequate.

(2) Every employer shall provide to each employee when required by the nature of the work, suitable seats, suitable tables, and suitable work benches:

- (a) Suitable seats means convenient, comfortable and safe seats where the work is such that employees may sit while working. "Suitable seats" in cannery occupations means one for every three employees who work in or on inspection tables and inspection belts;
- (b) Suitable tables and suitable work benches means tables and work benches so constructed as to give the greatest possible comfort and convenience to employees where the nature of the work and the safety and convenience of the employee requires a bench or table.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.261(1)

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 10-1990, f. & cert. ef. 7-26-90

**839-020-0070**

**Homework -- Generally**

- (1) Homeworkers as defined by OAR 839-020-0004(12) will be paid not less than the applicable minimum wage pursuant to ORS 653.025 for all hours suffered or permitted to work.
- (2) Homeworkers will be paid no less than time and one-half their regular rate of pay for all hours worked in excess of 40 hours in a work week pursuant to OAR 839-020-0030.

(3) General record keeping requirements, as provided in these rules, OAR 839-020-0080(1) through (3), are applicable to homeworkers.

(4) Employer employing homeworkers are subject to the provisions of OAR 839-020-0083 and 839-020-0085 concerning record availability and posting requirements.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.025 & 653.26191)

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

## **General Recordkeeping Requirements**

### **839-020-0080**

#### **General Requirements**

(1) Every employer regulated under ORS 653.010 to 653.261 shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the law applies:

(a) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

(b) Home address, including zip code;

(c) Date of birth, if under 19;

(d) Sex and occupation in which employed. (Sex may be indicated by use of the prefixes Mr., Mrs., Miss, or Ms.);

(e) Time of day and day of week on which the employee's workweek begins. If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole work force or establishment will suffice;

(f) Regular hourly rate of pay for any workweek in which overtime compensation is due, and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and the amount and nature of each payment which, pursuant to ORS 653.261(1) is excluded from the "regular rate of pay". (These records may be in the form of vouchers or other payment data.);

(g) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays);

(h) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;

(i) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under subsection (h) of this section;

(j) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total

additions and deductions;

(k) Total wages paid each pay period;

(l) Date of payment and the pay period covered by payment.

(2) Every employer who makes retroactive payment of wages or compensation under the supervision of the U.S. Department of Labor or the Oregon Bureau of Labor and Industries shall record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(3) With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by this rule, the schedule of daily and weekly hours the employee normally works, provided:

(a) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by the employee; and

(b) In week in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

(4) With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in ORS 653.010(17), employers shall maintain and preserve records containing all the information and data required by subsections (1)(a) through (e) of this rule and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and perquisites.

(5) With respect to each employee of hospitals and institutions primarily engaged in the care of the sick, the aged, or mentally ill or defective who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under OAR 839-020-0125(2)(d), employer shall maintain and preserve:

(a) The records required by section (1) of this rule except subsections (1)(e) and (g) through (i) of this rule, and in addition:

(A) Time of day and day of week on which the employee's 14-day work period begins;

(B) Hours worked each workday and total hours worked each 14-day work period;

(C) Total straight-time wages paid for hours worked during the 14-day work period;

(D) Total overtime excess compensation paid for hours worked in excess of eight in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

(6) With respect to each tipped employee, the employer shall maintain and preserve payroll or other records containing all the information and data required in section (1) of this rule and, in addition, a symbol, letter or other notation placed on the pay records identifying each employee.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.045

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**839-020-0082**

**Special Recordkeeping Circumstances**

- (1) In addition to keeping other records required by these rules, an employer who makes deductions from the wages of employees for lodging, meals or other facilities or services (as these terms are used in ORS 653.035) furnished to them by the employer or by an affiliated person, or who furnishes such lodging, meals, other facilities or services to employees as an addition to wages, shall maintain and preserve records substantiating the fair market value of furnishing each class of facility. Separate records of the fair market value of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the fair market value in each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the fair market value, as defined in these rules.
- (2) If additions to or deductions from wages paid so affect the total cash wages due in any work-week (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or if the employee works in excess of the applicable maximum hours standard and any addition to the wages paid are a part of wages, or any deductions made are claimed as allowable deductions, the employer shall maintain records showing on a workweek basis those additions to or deductions from wages.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.045

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**839-020-0083**

**Records Availability**

- (1) All records required to be preserved and maintained by these rules shall be preserved and maintained for a period of at least two years.
- (2) All employers shall keep such records in a safe and accessible place.
- (3) All records required to be preserved and maintained by these rules shall be made available for inspections and transcription by the Commissioner or duly authorized representative of the Commissioner.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.045

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**839-020-0085**

**Posting Requirements**

Every employer employing any employees subject to the minimum wage provisions shall post and keep posted a notice

explaining ORS 653.010 to 653.261, as prescribed by the Commissioner, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom OAR 839-020-0030 does not apply because of a total establishment exemption may alter or modify the poster with a legible notation to show that the overtime provisions do not apply.

**EXAMPLE:** "Overtime Provisions not Applicable to Taxicab Drivers (ORS 653.020(6))".

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.050

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**Exemptions**

**839-020-0100**

**Exemptions, Generally**

- (1) The provisions of OAR 839-020-0050 to 839-020-0065 do not apply to employees engaged in agricultural employment.
- (2) The provisions of OAR 839-020-0050 to 839-020-0065 do not apply to employees employed by public employers provided that the conditions of ORS 653.261(3) are met.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 9-1996, f. & cert. ef. 10-8-96

**839-020-0115**

**Relationship of State and Federal Law**

- (1) The Bureau of Labor and Industries has been informed and has reason to believe that there exists confusion and uncertainty on the part of employers concerning the inter-relationship of the Federal Fair Labor Standards Act and the regulations adopted pursuant thereto and the State Minimum Wage Law and the administrative rules adopted thereunder.
- (2) The purpose of this rule, therefore, is to inform employers of the proper application of the law and to direct them to authoritative sources in cases of doubt.
- (3) Employers who are required to comply with the state and federal laws, regulations and rules referred to in section (1) of this rule are required to comply with all standards set by those laws, regulations and rules. When one set of standards differs from the other, the standards most advantageous to employees must be met. For example, when the state minimum wage requires \$4.25/hour and the federal law requires \$3.85/hour, employers must pay \$4.25/hour. By paying the higher rate, the employer complies with both standards. Another example is when the employer may qualify for an exemption under the state law but not the federal law. In this case, the employer is required to comply with the federal law.

(4) Employers may contact the Technical Assistance Unit of the Bureau of Labor and Industries, 800 N.E. Oregon, #32, Portland, OR 97232 for more information on specific fact situations.

(5) The purpose of this rule is stated in section (2) of this rule. The rule should not be interpreted to mean anything other than this stated purpose.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.010 & 653.261

Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**Exemptions from Overtime**

**839-020-0125**

**Overtime Exemptions Pertaining to Employers Regulated Under the Federal Fair Standards Act**

(1) This rule applies to employers and employees newly subject to OAR 839-020-0030, Overtime Generally, by virtue of the repeal of ORS 653.020(7) by Section 2, Chapter 446, 1989 Oregon Laws.

(2) No employer shall be deemed to have violated OAR 839-020-0030 under the following circumstances:

(a) By employing any employee for a workweek in excess of that specified in OAR 839-020-0030 without paying the compensation for overtime employment prescribed therein; provided that, such employee received compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which the employee is employed; and, provided further that such employee is so employed as follows:

(A) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than 1,040 hours during any period of 26 consecutive weeks; or

(B) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of 52 consecutive weeks the employees shall be employed not more than 2,240 hours and shall be guaranteed not less than 1,840 hours (or not less than 46 weeks at the normal number of hours worked per week, but not less than 30 hours per week) and not more than 2,080 hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 or 2,080 hours in such period at rates not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(b)(1) and Sec. 7(b)(2), FLSA)

(b) By an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products, if:

(A) The annual gross volume of sales of such enterprise is less than \$1,000,000 exclusive of excise taxes; and

(B) More than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which such enterprise is located; and

(C) Not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are

engaged in the bulk distribution of such products for resale; and

(D) Such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to the employee under ORS 653.025. (Reference: Sec. 7(b)(3), FLSA)

(c) By employing any employee for a workweek in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement specifies a regular rate of pay of not less than the minimum hourly rate provided in ORS 653.025 and compensation at not less than 1-1/2 times such rate for all hours worked in excess of such maximum workweek, and a weekly guarantee of pay for not more than 60 hours based on the rates so specified. (Reference: Sec. 7(f), FLSA);

(d) By employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified in OAR 839-020-0030, if the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable under ORS 653.025 and if more than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw of guarantee. (Reference: Sec. 7(i), FLSA);

(e) When an employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises enters into an agreement or understanding arrived at between the employer and employee before performance of the work, that provides for a work period of 14 consecutive days in lieu of the workweek of seven consecutive days for purposes of overtime computation and provides further that for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14 day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(j), FLSA);

(f) By employing an employee of a not for profit amusement or recreational establishment in excess of the applicable work week specified in OAR 839-020-0030 if the establishment does not operate for more than seven months in any calendar year, or if, the establishment's average receipts for any six months of such year were not more than 33 1/3 per centum of its average receipts for the other six months of such year. (Reference: Section 13(a)(3), FLSA);

(g) By employing an employee in excess of the applicable workweek specified in OAR 839-020-0030 when the employee is employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee. (Reference: Sec. 13(a)(5), FLSA)

(h) By employing an employee who is compensated on an hourly basis at a rate of not less than \$27.63 per hour and who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty consists of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system specifications;

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or



(D) A combination of duties described in paragraphs (A), (B), and (C) of this paragraph the performance of which requires the same level of skills. (Reference: Sec. 13 (a) (17), FLSA)

(3) The provisions of OAR 839-020-0030 do not apply when the provisions of Section 13(b), of the Fair Labor Standards Act apply to employees as follows:

(a) Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; or

(b) Any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of Part I of the Interstate Commerce Act; or

(c) Any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act; or

(d) Any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(e) Any employee employed as a seaman; or

(f) Any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located in a city or town of 100,000 population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of 100,000, or is located in a city of 25,000 population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(g) Any sales person, parts person or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee is employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(h) Any sales person primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a non-manufacturing establishment primarily engaged in the business of selling trailers, boats or aircraft to ultimate purchasers; or

(i) Any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Commissioner shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under OAR 839-020-0030; or

(j) Any employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(k) Any employee with respect to the employee's employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on the farmer's own account or in conjunction with other farmers, if such employee is primarily employed during the employee's workweek in agriculture by such farmer, and if such employee is paid for the operations at a wage rate not less than that prescribed by ORS 653.025; or

(l) Any employee employed within the area of production (as defined by the Commissioner) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operation; or

(m) Any employee engaged in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the State of Oregon, or any employee engaged in transportation, whether or not performed by the farmer, between the farm and any point

within the State of Oregon of persons employed or to be employed in the harvesting of fruits or vegetables; or

(n) Any employee who is employed in domestic service in a household and who resides in such household; or

(o) Any employee employed by an establishment which is a motion picture theater; or

(p) Any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employee's employer in such forestry or lumbering operations does not exceed eight; or

(q) Any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and receives compensation for employment in excess of 56 hours in any workweek at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 13(b), (1), (2), (3), (5), (6), (9), (10), (11), (12), (13), (14), (16), (21), (27), (28) and (29), FLSA)

(4) The provisions of OAR 839-020-0030 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths). (Reference: Sec. 13(d), FLSA)

Stat. Auth.: ORS 653.040 & 653.261

Stats. Implemented: ORS 653.261

Hist.: BL 5-1989(Temp), f. 8-18-89, cert. ef. 9-1-89, (and corrected by BL 10-1989(Temp), f. 12-4-89, cert. ef. 9-1-89); BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 5-1992, f. 4-24-92, cert. ef. 4-29-92; BL 6-1992(Temp), f. & cert. ef. 6-5-92; BL 14-1992, f. & cert. ef. 12-14-92; BL 9-1996, f. & cert. ef. 10-8-96

## 839-020-0130

### Public Employees

(1) Pursuant to the provisions of ORS 653.261 (3), OAR 839-020-0030 does not apply to individuals employed by the State of Oregon or any political subdivision or quasi-municipal corporation thereof under the following circumstances:

(a) When the provisions of any law prescribe rules pertaining to overtime pay; or

(b) When the provisions of a collective bargaining agreement prescribes rules pertaining to overtime pay.

(2) Individuals employed by a public employer are subject to the overtime pay provisions of ORS 279.340 unless otherwise exempt under ORS 279.342. The State of Oregon or any political subdivision or quasi-municipal corporation thereof is a public employer and the overtime provisions of OAR 839-020-0030 do not apply to its employees.

(3) As used in this rule, "public employer" means the State of Oregon, including the following political subdivisions: cities, counties, community colleges, school districts, special districts and public and quasi-public corporations.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.261

Hist.: BL 5-1989(Temp), f. 8-18-89, cert. ef. 9-1-89, (and corrected by BL 10-1989(Temp), f. 12-4-89, cert. ef. 9-1-89); BL 1-1990, f. 2-27-90, cert.

ef. 2-28-90; BL 9-1996, f. & cert. ef. 10-8-96

**839-020-0135**

**Agricultural Employees**

Pursuant to the provisions of ORS 653.261(2), OAR 839-020-0030 does not apply to individuals employed in agricultural employment.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.261(2)

Hist.: BL 5-1989(Temp), f. 8-18-89, cert. ef. 9-1-89, (and corrected by BL 10-1989(Temp), f. 12-4-89, cert. ef. 9-1-89); BL 1-1990, f. 2-27-90, cert. ef. 2-28-90

**Exemptions From Minimum Wage and Overtime**

**839-020-0150**

**Resident Managers of Adult Foster Homes**

An individual employed as a resident manager of an adult foster home is not subject to the minimum wage and overtime provisions of ORS 653.010 to 653.261 so long as the resident manager is domiciled at the adult foster home and is directly responsible for the daily care of the residents residing in the home; and

- (1) The resident manager is employed to work in a licensed adult foster home as defined in ORS 443.705(4) pursuant to the Adult Foster Homes Licensing Law (ORS 443.705 to 443.825) or
- (2) The resident manager is employed to work in an adult foster home which is exempt from the license, inspection and fee provisions of the Adult Foster Homes Licensing Law (ORS 443.705 to 443.825) pursuant to ORS 443.780.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.020

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**839-020-0160**

**Certain Prison Inmate Labor Exempt**

The provisions of ORS 653.025, 653.027, 653.030, 653.261 and these rules pertaining to the payment of minimum wage and overtime pay do no apply to inmates of the Oregon Department of Corrections assigned to a work release program or otherwise working in gainful private employment pursuant to ORS 144.480, relating to prison inmate labor.

Stat. Auth.: ORS Ch. 651

Stats. Implemented: ORS Ch. 653

Hist.: BL 9-1996, f. & cert. ef. 10-8-96

**Exemptions Relating to Persons Employed by a Public Agency in Fire Protection and Law Enforcement Activities**

**839-020-0200**

**Authority**

ORS 279.342(3) requires the Labor Commissioner to define certain terms relating to persons employed by a public employer in fire protection and law enforcement activities (including security personnel in corrections institutions), who are exempt from the overtime provisions of ORS 279.340

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0210**

**Generally**

(1) OAR 839-020-0210 to 839-020-0270 are adopted pursuant to ORS 279.342(3). The rules define certain public employees and activities exempt from the overtime provisions of 279.340.

(2) Employees of a public employer, as defined in ORS 243.650, are exempt from the overtime pay requirements of ORS 279.340 when they are employed in:

(a) Fire protection activities; or

(b) Law enforcement activities, including security personnel in correctional institutions.

(3) The application of OAR 839-020-0200 to 839-020-0270 is limited to public agencies, and does not apply to any private organization engaged in furnishing fire protection or law enforcement services, even if the services are provided under contract with a public agency.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0220**

**Definitions**

As used in ORS 279.342 and OAR 839-020-0200 to 839-020-0270, unless the context requires otherwise:

(1) "Employees employed in fire protection activities" include:

(a) A "firefighter" as that term is defined in ORS 652.050; and

(b) Any employee:

(A) Who is employed by an organized fire department or fire protection district;

(B) Who has been trained to the extent required by state statute or local ordinance;

(C) Who has the legal authority and responsibility to engage in the prevention, control or extinguishment of a fire of any type; and

(D) Who performs activities which are required for, and directly concerned with, the prevention, control or extinguishment of fires, including such incidental non-firefighting functions as housekeeping, equipment maintenance, lecturing, attending community fire drills, and inspecting homes and schools for fire hazards.

(e) Employees as defined in paragraphs (a) and (b) of this subsection, regardless of their status as "trainee," "probationary," or "permanent," or of their particular specialty or job title (e.g., firefighter, engineer, hose or ladder operator, fire specialist, fire inspector, lieutenant, captain, inspector, fire marshal, battalion chief, deputy chief, or chief), and regardless of their assignment to support activities of the type described in section (2) of this rule, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity;

(d) Rescue and ambulance service personnel if such personnel form an integral part of the public agency's fire protection activities (see OAR 839-020-0260);

(e) Employees who work for forest conservation agencies or other public agencies charged with forest fire fighting responsibilities and who direct or engage in:

(A) Fire spotting or lookout activities; or

(B) Fighting fires on the fire line or from aircraft; or

(C) Operating tank trucks, bulldozers and tractors for the purpose of clearing fire breaks.

(f) Employees as defined in paragraph (e) of this subsection, regardless of their status as full time or part time agency employees or as temporary or casual workers employed for a particular fire or for periods of high fire danger, including those who have had no prior training;

(g) Any employee who actually engages in fire protection activities as defined in this section and in the simultaneous performance of such related functions as housekeeping, equipment maintenance, tower repairs and/or the construction of fire roads.

(2) "Employees employed in fire protection activities" does not include:

(a) "Civilian" employees of a fire department, fire district, or forestry service who engage in such support activities as those performed by dispatchers, alarm operators, apparatus and equipment repair and maintenance workers, camp cooks, clerks and stenographers;

(b) Maintenance and office personnel who do not fight fires on a regular basis, although such employees may be included during emergency situations when they are called upon to spend substantially all (i.e., 80 percent or more) of their time during the applicable work period in one or more of the activities described in paragraph (e) of this section.

(3) "Employees employed in law enforcement activities" include:

(a) Any employee who is a uniformed or plainclothed member of a body of officers and subordinates who are

empowered by state statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes and:

(A) Who has the power to arrest; and

(B) Who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigation and law enforcement techniques, community relations, medical aid and ethics.

(b) Employees as defined in paragraph (a) of this subsection, regardless of their rank, or of their status as "trainee," "probationary," or "permanent," and regardless of their assignment to duties incidental to the performance of their law enforcement activities such as equipment maintenance or lecturing, or to support activities of the type described in section (8) of this rule, whether or not such assignment is for training or familiarization purposes, or for reasons of illness, injury or infirmity;

(c) Rescue and ambulance service personnel if such personnel form an integral part of the public agency's law enforcement activities (see OAR 839-020-0260).

(4) "Employees employed in law enforcement activities" typically include city police; district or local police, sheriffs, under sheriffs or deputy sheriffs who are regularly employed and paid as such; court marshals or deputy marshals; constables and deputy constables who are regularly employed and paid as such; border control agents; state troopers and highway patrol officers. Other agency employees not specifically mentioned may, depending upon the particular facts and pertinent statutory provisions in that jurisdiction meet the tests described in section (3) of this rule. If so, for purposes of ORS 279.342(3), they will also qualify as law enforcement officers. Such employees might include, for example, fish and game wardens or criminal investigative agents assigned to the office of a district attorney, an attorney general, a solicitor general or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.

(5) Employees who do not meet each of the three tests described in section (3) of this rule are not engaged in "law enforcement activities" as that term is used in ORS 279.342(3). Employees who normally would not meet each of these tests include:

(a) Building inspectors (other than those defined in OAR 839-020-0240);

(b) Health inspectors;

(c) Animal control personnel;

(d) Sanitarians;

(e) Civilian traffic employees who direct vehicular and pedestrian traffic at specified intersections or other control points;

(f) Civilian parking checkers who patrol assigned areas for the purpose of discovering parking violations and issuing appropriate warnings or appearance notices;

(g) Wage and hour compliance officers;

(h) Equal employment opportunity compliance officers;

(i) Tax compliance officers;

(j) Coal mining inspectors; and

(k) Building guards whose primary duty is to protect the lives and property of persons within the limited area of the

building.

(6) "Correctional institution" means any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Typically, such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories.

(7) "Security personnel in correctional institutions" include those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions, regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank (e.g., warden, assistant warden or guard) or of their status as "trainee," "probationary," or "permanent," and regardless of their assignment to duties incidental to the performance of their law enforcement activities, or to support activities of the type described in section (5) of this rule, whether or not such assignment is for training or familiarization purposes or for reasons of illness, injury or infirmity.

(8) "Employees employed in law enforcement activities" does not include:

(a) "Civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers;

(b) Employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching, or in psychological, medical and paramedical services, even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

## **839-020-0230**

### **Limitation on Nonexempt Work**

(1) Employees engaged in fire protection or law enforcement activities as defined in OAR 839-020-0220 may also engage in some nonexempt work which is not performed as an incident to or in conjunction with their fire protection or law enforcement activities. For example, firefighters who work for forest conservation agencies may, during slack times, plant trees and perform other conservation activities unrelated to their firefighting duties. The performance of such nonexempt work will not defeat the exemption in ORS 279.342(3) unless it exceeds 20 percent of the total hours worked by that employee during the workweek or applicable work period. A person who spends more than 20 percent of his/her working time in nonexempt activities is not considered to be an employee engaged in fire protection or law enforcement activities for purposes of OAR 839-020-0200 to 839-020-0270.

(2) Public agency fire protection and law enforcement personnel may, at their own option, undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment. The performance of such work does not affect the application of the exemption in ORS 279.342(3) with respect to the regular employment. In addition, the hours of work in the different capacity need not be counted as hours worked for overtime purposes on the regular job, nor are such hours counted in determining the 20 percent limitation for nonexempt work discussed in subsection (1) of this section.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0240**

**Public Agency Employees Engaged in Both Fire Protection and Law Enforcement Activities**

Some public agencies have employees (often called "public safety officers") who engage in both fire protection and law enforcement activities, depending on the agency needs at the time. This dual assignment would not defeat the exemption in ORS 279.342(3), provided that each of the activities performed meets the appropriate tests set forth in OAR 839-020-0220. This is so regardless of how the employee's time is divided between the two activities. However, all time spent in connection with fire protection or law enforcement functions, or with neither, must be combined for purposes of the 20 percent limitation on nonexempt work as provided in OAR 839-020-0230.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0250**

**Effect of Training Time**

The attendance at a bona fide fire or police academy or other training facility, when required by the employing agency, constitutes engagement in activities under ORS 279.342(3) only when the employee meets all the applicable tests described in OAR 839-020-0220 (except for the power of arrest for law enforcement personnel), as the case may be. If the applicable tests are met, then basic training or advanced training is considered incidental to, and part of, the employee's fire protection or law enforcement activities.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0260**

**Ambulance and Rescue Service Employees**

- (1) Ambulance and rescue service employees of a public agency other than a fire protection or law enforcement agency may be treated as employees engaged in fire protection or law enforcement activities of the type contemplated by ORS 279.342(3) if their services are substantially related to firefighting or law enforcement activities in that:
- (a) The ambulance and rescue service employees have received training in the rescue of fire, crime, and accident victims or firefighters or law enforcement personnel injured in the performance of their respective duties; and
  - (b) The ambulance and rescue service employees are regularly dispatched to fires, crime scenes, riots, natural disasters and accidents.



- (2) Where employees perform both fire protection and law enforcement activities, the applicable standards is the one which applies to the activity in which the employee spends the majority of work time during the work period.
- (3) Ambulance and rescue service employees are not exempt under ORS 279.342(3) when they are employees of public agencies engaged in the operation of a hospital or an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institutions.
- (4) Ambulance and rescue service employees of private organizations are not exempt from the provisions of ORS 279.342(3) even if their activities are substantially related to the fire protection and law enforcement activities performed by a public agency or their employer is under contract with a public agency to provide such services.

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0270**

**Other Exemptions**

Although ORS 279.342(3) provides special exemptions for employees of public agencies engaged in fire protection and law enforcement activities, such workers may also be subject to other exemptions in ORS 279.342, and public agencies may apply such other exemptions if applicable. For example, a high-ranking police official engaged in law enforcement activities who is exempt from the provisions of ORS 279.340 as an employee employed in fire protection activities pursuant to the provisions of ORS 279.342(3) and OAR 839-020-0320, may also be exempt from ORS 279.340 as an "executive" employee by virtue of the exemption for any employee employed as an executive, administrative, supervisory, or professional employee, (as those terms are defined in OAR 839-020-0320) pursuant to the provisions of ORS 279.342(5)(a).

Stat. Auth.: ORS 279.342(3)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**Exemptions Relating to Executive, Administrative, Supervisory and Professional Employees of a Public Agency**

**839-020-0300**

**Authority**

ORS 279.342(5)(a) requires the Labor Commissioner to define certain terms relating to executive, administrative, supervisory or professional employees of a public agency who are exempt from the overtime provisions of ORS 279.340 because of the nature of their employment.

Stat. Auth.: ORS 279.342(5)(a)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

## 839-020-0310

### Generally

(1) OAR 839-020-0300 to 839-020-0350 are adopted pursuant to ORS 279.342(5)(a). The rules define the nature of executive, administrative, supervisory and professional employment for purposes of the overtime pay exemption under ORS 279.340.

(2) The application of OAR 839-020-0300 to 839-020-0350 is limited to public agencies, and does not apply to the employees of any private organization.

Stat. Auth.: ORS 279.342(5)(a)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

## 839-020-0320

### Definitions

As used in ORS 279.340 to 279.342, unless the context requires otherwise:

(1) Employees exempted from overtime because of the executive nature of their employment means employees:

(a) Whose primary duty consists of the management of the public agency in which they are employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly direct the work of two or more other employees therein; and

(c) Who have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercise discretionary powers; and

(e) Who do not devote more than 20 percent, or, in the case of an employee of a retail or service establishment, who does not devote as much as 40 percent, of his/her hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (a) through (d) of this section: *Provided*, that this subsection shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment; and

(f) Who are compensated for their services on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging, or other facilities: *Provided*, that an employee who is compensated on a salary basis at a rate of not less than \$250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the agency in which the employee is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

(2) Employees exempted from overtime because of the administrative nature of their employment means employees:

(a) Whose primary duty consists of either:

(A) The performance of office or non-manual work directly related to management policies or general business operations of their employer or their employer's customers; or

(B) The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

(b) Who customarily and regularly exercise discretion and independent judgment; and

(c)(A) Who regularly and directly assist an employee employed in an executive or administrative capacity (as such terms are defined in this rule); or

(B) Who perform under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or

(C) Who execute under only general supervision special assignments and tasks; and

(d) Who do not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his/her hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in subsections (a) through (c) of this section; and

(e)(A) Who are compensated for their services on a salary or fee basis at a rate of not less than \$155 per week, exclusive of board, lodging, or other facilities; or

(B) Who, in the case of academic administrative personnel, are compensated for services as required by paragraph (e) (A) of this subsection, or on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which employed: *Provided*, that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance of work described in section (a) of this subsection, which includes work requiring the exercise of discretion and independent judgment, shall be deemed to meet all the requirements of this section.

(3) Employees exempted from overtime because of the supervisory nature of their employment means employees:

(a) Whose primary duty consists of the management of the enterprise in which they are employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly direct the work of two or more other employees therein; and

(c) Who have the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(d) Who customarily and regularly exercise discretionary powers; and

(e) Who do not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent of his/her hours of work in the workweek to activities which are not directly and closely related to the performance of the work described in sections (a) through (d) of this section: *Provided*, that this subsection shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment;

(f) Who are compensated for their services on a salary basis at a rate of not less than \$155 per week, exclusive of board, lodging, or other facilities: *Provided*, that an employee who is compensated on a salary basis at a rate of not less than \$250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the management of the agency in which the employee is employed or of a customarily recognized department or subdivision thereof, and

includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all the requirements of this section.

(4) Employees exempted from overtime because of the professional nature of their employment means employees:

(a) Whose primary duty consists of the performance of:

(A) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or

(B) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(C) Teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who are employed and engaged in this activity as teachers in the school system or educational establishment or institution by which they are employed; or

(D) Work that requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who are employed and engaged in these activities as computer systems analysts, computer programmers, software engineers, or other similarly skilled workers in the computer software field, as provided in OAR 839-020-0350; and

(b) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(c) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and

(d) Who do not devote more than 20 percent of their hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in subsections (a) through (c) of this section; and

(e) Who are compensated for services on a salary or fee basis at a rate of not less than \$170 per week, exclusive of board, lodging, or other facilities: *Provided*, that this subsection shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof, nor in the case of an employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of medicine or any of its branches, nor in the case of an employee employed and engaged as a teacher as provided in subsection (a)(C) of this section: *Providedfurther*, that an employee who is compensated on a salary or fee basis at a rate of not less than \$250 per week, exclusive of board, lodging, or other facilities, and whose primary duty consists of the performance either of work described in subsection (a), (A), or (C) or (D) of this section, which includes work requiring the consistent exercise of discretion and judgment, or of work requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section: *Providedfurther*, that the salary or fee requirements of this paragraph shall not apply to an employee engaged in computer-related work within the scope of paragraph (a)(D) of this section and who is compensated on an hourly basis at a rate in excess of \$27.63 per hour.

Stat. Auth.: ORS 279.342(5)(a)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0330**

**Exception to Salary or Fee Basis**

(1) An employee who otherwise meets the requirements of OAR 839-020-0310 shall not be disqualified from exemption under ORS 279.342 (5) (a) on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

- (a) Permission for its use has not been sought or has been sought and denied;
- (b) Accrued leave has been exhausted; or
- (c) The employee chooses to use leave without pay.

(2) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid "on a salary basis" *except* in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

Stat. Auth.: ORS 279.342(5)(a)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**839-020-0350**

**Computer Professionals**

Employees exempted from overtime because of the professional nature of their employment includes employees who are computer systems analysts, computer programmers, software engineers, or other similarly skilled workers, whose primary duties consist of the following:

- (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system specifications;
- (2) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- (3) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- (4) A combination of duties described in subsections (1), (2) and (3) of this section, the performance of which requires the same level of skills.

Stat. Auth.: ORS 279.342(5)(a)

Stats. Implemented: ORS 279.342

Hist.: BL 8-1997, f. & cert. ef. 11-13-97

**Civil Penalties**

## **839-020-1000**

### **Violations Separate and Distinct**

Each violation is a separate and distinct offense. In the case of continuing violations, each day's continuance is a separate and distinct violation.

Stat. Auth.: ORS 653.040

Stats. Implemented: ORS Ch. 314, 1997 OL

Hist.: BL 9-1997, f. & cert. ef. 11-13-97

## **839-020-1010**

### **Violations for Which a Civil Penalty May be Assessed**

The commissioner may assess a civil penalty for any of the following willful violations:

- (1) Payment to mentally or physically handicapped persons less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015;
- (2) Payment to student-learners less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015;
- (3) Failure to make required payroll and other records in violation of ORS 653.045 and OAR 839-020-0080;
- (4) Failure to keep available required payroll and other records in violation of ORS 653.045 and OAR 839-020-0080;
- (5) Failure to supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610 in violation of ORS 653.045, OAR 839-020-0012 and 839-020-0080;
- (6) Failure to keep summaries of ORS 653.010 to 653.261 and rules promulgated thereto by the commissioner and the Wage and Hour Commission posted in a conspicuous and accessible place in or about the premises where such employees are employed in violation of ORS 653.050;
- (7) Discharging or discriminating in any other manner against any employee in violation of ORS 653.060:
  - (a) Because the employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;
  - (b) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or relating to ORS 653.010 to 653.261; or
  - (c) Because the employee has testified or is about to testify in any such proceedings.
- (8) Failure to provide to each employee appropriate meal periods in violation of OAR 839-020-0050;
- (9) Failure to provide to each employee appropriate rest periods in violation of OAR 839-020-0050;
- (10) Requiring any employee to lift excessive weights in violation of OAR 839-020-0060; or
- (11) Employing any employee to work under any conditions in violation of OAR 839-020-0065.

Stat. Auth.: ORS 653.040

Stats. Implemented: Ch. 314, 1997 OL

Hist.: BL 9-1997, f. & cert. ef. 11-13-97

**839-020-1020**

**Criteria for Determining a Civil Penalty**

- (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;
  - (f) Whether the employers' 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.

Stat. Auth.: ORS 653.040

Stats. Implemented: Ch. 314, 1997 L

Hist.: BL 9-1997, f. & cert. ef. 11-13-97

**839-020-1030**

**Schedule of Civil Penalties**

- (1) The civil penalty for any one violation 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 referred to in OAR 839-020-1020.
- (2) The civil penalties set out in this rule shall be in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS 653.040

Stats. Implemented: Ch. 314, 1997 OL

Hist.: BL 9-1997, f. & cert. ef. 11-13-97

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 21**

**WAGE AND HOUR COMMISSION**

**Rules Regulating the Employment of Minors in Oregon**

**Procedural Rules**

**839-021-0001**

**Generally**

The procedural rules of the Commission are contained in OAR 839-022-0000 to 839-022-0060.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.505 - 653.545

Hist.: BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0006**

**Definitions**

As used in ORS 653.305 to 653.360 and in OAR 839-021-0001 to 839-021-0500, unless the context requires otherwise:

- (1) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.
- (2) "Bureau" means Bureau of Labor and Industries of the State of Oregon.

- (3) "Commission" means the Wage and Hour Commission of the State of Oregon.
- (4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (5) "Employ" shall have the same meaning as that which appears in ORS 653.010(1).
- (6) "Employer" shall have the same meaning as that which appears in ORS 653.010(2).
- (7) "Employment Certificate" means the employment certificate issued to employers for the employment of minors pursuant to ORS 653.307, and the employment permit referred to in ORS 653.360(3).
- (8) "Executive Secretary" means the Commissioner of the Bureau of Labor and Industries.
- (9) "Harvest Season" means a period of time during which the crop or crops of the agricultural employer for whom a minor is employed are harvested. Work performed during the harvest season includes work in connection with the gathering of the crop but does not include cultivation and tillage of the soil or cultivation and growing of agricultural commodities.
- (10) "Minor" means any person under 18 years of age.
- (11) "Workday" means any fixed period of 24 consecutive hours.
- (12) "Workweek" means any fixed and regularly recurring period of seven consecutive workdays.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: HB 2633 & HB 2921

Hist.: BL 6-1988, f. & cert. ef. 4-12-88; BL 11-1991, f. & cert. ef. 10-31-91; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

## **Minors**

### **General Working Conditions**

#### **839-021-0067**

#### **Hours of Employment for Minors Under 18 Years of Age**

- (1) No employer shall employ minors, except those employed in organized youth camps or those employed in agricultural employment, to work more than 44 hours per week unless a Special Emergency Overtime Permit has been issued therefor by the Wage and Hour Commission. This permit shall not be issued unless:
  - (a) The number of hours do not exceed those provided by statute; and
  - (b) When the minor is not otherwise exempt from the overtime pay provisions of any law, the minor receives one and one half times the regular rate of pay for all hours worked over 40 in a workweek.
- (2) The maximum number of hours for persons employed in canneries is ten hours per day.
- (3) An employer desiring to employ a minor 16 years of age or older in a cannery for time in excess of ten hours per

day, may apply in writing to the Administrator of the Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon #32, Portland, OR 97232, setting out the full and complete circumstances of the proposed employment. The administrator shall investigate the terms and conditions of the proposed employment and if the administrator determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor, the administrator shall issue a Special Emergency Overtime Permit to the employer. At the next regularly scheduled meeting of the Wage and Hour Commission, the administrator shall report the facts and circumstances of the employment to the commission, and the commission may adopt, vacate or modify the Special Emergency Overtime Permit issued under this section.

(4) If, after the investigations referred to in section (3) of this rule, the administrator determines that the character of the employment is unsuitable and that such employment will adversely affect the physical and moral well-being of the minor or that there is no adverse effect on the employment opportunities of the minor, the administrator shall refuse to issue a special overtime permit. The administrator shall report the facts and circumstances to the Wage and Hour Commission at its next regularly scheduled meeting and the commission may adopt, vacate or modify the refusal.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 3-1979(Temp), f. & ef. 3-21-79; BL 5-1979(Temp), f. & ef. 5-16-79; BL 12-1979, f. & ef. 9-6-79; BL 11-1981(Temp), f. & ef. 10-30-81; BL 4-1982, f. & ef. 3-5-82; BL 6-1988, f. & cert. ef. 4-12-88; BL 11-1990, f. 8-16-90, cert. ef. 9-1-90; BL 11-1991, f. & cert. ef. 10-31-91; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

## **839-021-0070**

### **Hours of Employment for Minors Under 16 Years of Age**

(1) Except as provided in section (2) of this rule, employment of minors under 16 years of age shall be confined to the following periods:

(a) Outside school hours;

(b) Not more than 40 hours in any one week when school is not in session;

(c) Not more than 18 hours in any one week when school is in session;

(d) Not more than eight hours in any one day when school is not in session;

(e) Not more than three hours in any one day when school is in session;

(f) Between 7 a.m. and 6 p.m.; provided, however, that with a validated employment certificate specifying the conditions set forth in ORS 653.315(2)(d), a minor under 16 years of age may work until 7 p.m., except that during the summer (June 1 through Labor Day), the minor may work until 9:00 p.m.

(2) In the case of enrollees in work training programs conducted under Part B of Title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of subsection (1)(a) of this rule if the employer has on file with the records kept pursuant to OAR 839-021-0170 an unrevoked written statement of the Regional Manpower Administrator of the U.S. Department of Labor or representative setting out the periods which the minor will work and certifying that the minor's employment confined to such periods will not interfere with the minor's health and well-being, countersigned by the principal of the school which the minor is attending with the principal's certificate that such employment will not interfere with the minor's schooling.

(3) In the case of students enrolled in a career exploration or other work experience program, there is an exception to subsection (1)(a) of this rule when:

- (a) The minor is employed as a student learner pursuant to ORS 653.070; or
- (b) The minor is enrolled in a school-supervised and school-administered work experience and career exploration program meeting the educational standards established and approved by the Oregon Department of Education.
- (4) This rule does not apply when **Title 29, CFR, Part 570, Subpart C, Section 570.35a** would otherwise apply.
- (5) Employment of minors enrolled in a program pursuant to sections (2), (3) and (4) of this rule shall be confined to not more than 23 hours in any one week when school is in session and not more than three hours in any day when school is in session, any portion of which may be during school hours. Insofar as these provisions are inconsistent with the provisions of section (1) of this rule, this section shall be controlling.
- (6) The employment of a minor enrolled in a program pursuant to sections (2), (3) and (4) of this rule must not have the effect of displacing a worker employed in the establishment of the employer.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.315

Hist.: BL 11-1990, f. 8-16-90, cert. ef. 9-1-90; BL 15-1992, f. 12-14-92, cert. ef. 12-15-92; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

## 839-021-0072

### Rest Periods and Meal Periods

- (1) Every employer shall provide to each minor "appropriate meal periods" and "appropriate rest periods".
- (2) As used in this rule, unless the context requires otherwise:
  - (a) "Appropriate Meal Periods" means:
    - (A) A period of not less than 30 minutes for rest and meal during which a minor is relieved of all duties and commencing within the first five hours and one minute after reporting for work;
    - (B) A period of not less than 30 minutes in which to eat while continuing to perform duties or remain on call but which is not deducted from the minor's hours worked. (This is permitted only when the minor is 16 years of age or older and in those cases where the nature of the work prevents the minor from being relieved from all duty.)
  - (b) "Appropriate Rest Periods" means a period of rest of not less than 15 minutes without deduction from the minor's hours worked for every four hours or major part thereof worked in one work period. This period of rest shall be in addition to time allowed for the usual meal period. Insofar as feasible, considering the nature and type of job or position, such period of rest is to be provided approximately in the middle of each work period. The employer shall relieve the minor from all duties during the rest period.
- (3) The Commission may for good cause shown exempt an employer or class of employers from the requirements of section (1) of this rule.
- (4) Application forms for exemption from the requirements of section (1) of this rule, may be obtained at any office of the Bureau of Labor and Industries and shall be filed with the Administrator, Wage and Hour Division, 800 N.E. Oregon #32, Portland, OR 97232. The Administrator shall investigate the employment and the facts and circumstances set out in the application in support of the requested exemption and if the Administrator determines that the requested exemption will not be detrimental to the health of the minors affected, the Administrator shall issue a letter of authorization setting

out the terms and conditions of the exemption granted and the period of time for which it will be effective. At the next regularly scheduled meeting of the Wage and Hour Commission, the Administrator shall report the facts and circumstances of the application, as well as the results of the Administrator's investigation to the Commission, Commission may adopt, vacate, or modify the Administrator's disposition of the application.

(5) In the event that the Administrator issues the letter of authorization referred to in section (4) of this rule, the Administrator shall, at the same time, provide the employer with three copies of a notice which the employer is required to post on the business premises in those places most frequented by those minors affected by the requested exemption. The notice shall include:

- (a) A recitation that the employer has requested an exemption from the requirements of this rule and that the Administrator has tentatively granted such exemption; and
  - (b) The date, time, and place of the next public meeting of the Wage and Hour Commission at which the Commission will make final disposition of the application for exemption; and
  - (c) A recitation to the effect that the Wage and Hour Commission will take public testimony concerning its disposition of the employer's application for exemption and will consider documents relative to this disposition; and
  - (d) An address to which such documents and correspondence should be addressed.
- (6) The provisions of section (1) of this rule do not apply when minors are covered by the terms of a collective bargaining agreement.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.315

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 13-1979, f. & ef. 9-6-79; BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0087**

**Working Conditions**

(1) No employer shall employ any minor to work in the State of Oregon, except under the following conditions:

- (a) Where a sanitary and safe work area is provided;
- (b) Where adequate lighting is provided;
- (c) Where adequate ventilation is provided;
- (d) Where adequate washrooms are provided;
- (e) Where adequate toilet facilities are provided;
- (f) Where the employer is in full compliance with provisions of ORS Chapter 654 (The Oregon Safe Employment Act) and the rules and regulations promulgated thereunder. For the purposes of this rule, the compliance status of the employer is determined by the Occupational Safety and Health Division of the Insurance and Finance Department;
- (g) Where the employer is in full compliance with the provisions of the following statutes relating to the payment of wages:
  - (A) ORS 652.110 to 652.190;

- (B) ORS 652.610;
- (C) ORS 653.010 to 653.265;
- (D) ORS 279.348 to 279.365;
- (E) **Title 29, U.S.C., 201, et seq.** (Federal Fair Labor Standards Act);
- (F) **Title 40, U.S.C., 276a.** (Davis Bacon Act);
- (G) **Title 41, U.S.C., 351, et seq.** (Service Contract Act).

(2) When the following facilities are provided, no employer shall employ any minor to work in the State of Oregon unless:

- (a) The rest rooms provided are adequate;
- (b) The dressing rooms provided are adequate;
- (c) The lunch rooms provided are adequate;
- (d) The cot or stretcher provided for use in illnesses, accidents, or other emergencies is adequate.

(3) Upon expiration of ten days after receipt of notice and recommendations of the appropriate governmental agency with respect to temperature and humidity conditions or within such further time after receipt of the notice as may be prescribed by the Commission, no employer shall employ any minor without complying with the recommendations.

(4) Every employer shall provide to each minor when required by the nature of the work, "suitable seats", "suitable tables", and "suitable work benches":

(a) "Suitable seats" means convenient, comfortable and safe seats where the work is such that minors may sit while working. "Suitable seats" in cannery occupations means one for every three minors who work in or on inspection tables and inspection belts;

(b) "Suitable tables" and "suitable work benches" mean tables and work benches so constructed as to give the greatest possible comfort and convenience to minors where the nature of the work and the safety and convenience of the minor requires a bench or table.

(5) No employer shall require a minor to report for work without providing adequate work to earn a reasonable compensation, or paying to such minor a reasonable compensation in lieu thereof. As used in this paragraph:

(a) "Adequate work" means sufficient work to earn at least 1/2 the amount the minor would have earned at his/her regular rate had the minor worked the hours he/she and the employer previously agreed to;

(b) "Reasonable compensation" means the greater of:

(A) The amount the minor receives for one hour of work at his/her regular rate of pay; or

(B) The amount determined by multiplying the minor's regular rate of pay by one-half the hours the minor and the employer agreed the minor would work.

(6) The provisions of section (5) of this rule shall not apply:

(a) When all the following conditions pertaining to the employer providing the minor notice not to report to work are met:

- (A) The employer has a policy describing how notice not to report to work will given minors; and
  - (B) The employer posts its notice policy in a conspicuous place frequented by employees at the worksite where the minor is employed; and
  - (C) The employer communicates this policy to the minor prior to his/her beginning to work; and
  - (D) The employer makes a good faith attempt to follow its policy so as to give the minor notice before the minor must leave his/her residence to travel to work; or
- (b) When circumstances beyond the employer's control prevent the performance of the work the minor was to perform during the hours the minor had agreed to or was scheduled to work. Such circumstances include, but are not limited to, acts of nature (e.g., snowstorms, flooding), emergencies (e.g., fires, power outages), and unforeseeable equipment failures.
- (7) The employer shall have the burden to maintain records sufficient to resolve any dispute arising under section (5) of this rule concerning the hours the minor agreed to or was scheduled to work

[Publications:The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 279.348 - 279.365, 652.110 - 652.190, 652.305, 652.610, 653.101 - 653.265 & Ch. 654

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 2-1987, f. & ef. 1-16-87; BL 6-1987, f. & ef. 3-19-87; BL 6-1988, f. & cert. ef. 4-12-88; BL 12-1990(Temp), f. 8-16-90, cert. ef. 8-17-90; BL 2-1991, f. 1-23-91, cert. ef. 2-14-91

**839-021-0092**

**Weight Lifting**

No minor shall be required to lift excessive weights.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 2-1987, f. & ef. 1-16-87; BL 6-1987, f. & ef. 3-19-87

**Prohibited Employment**

**839-021-0097**

**Special Employment Situations**

- (1) No minor under 16 years of age:
  - (a) May be employed in an occupation or type of work declared hazardous by the commission;
  - (b) Shall be assigned any duties in connection with an organized youth camp prior to 6 a.m. or after 10 p.m., or more than eight hours per day;

(c) May be employed to act as a canvasser, peddler or "outside salesperson" as defined in ORS 653.010(8), from house to house.

(2)(a) Except as provided in subsection (b) of this section, no minor shall be employed at any work on or around any unenclosed commercial wharves or docks or in any unenclosed buildings extending over water, unless:

(A) There is located at the site of the work and conspicuously displayed at such site adequate safety equipment including, but not limited to:

(i) For every 30 linear feet of unenclosed area no less than one Type IV personal flotation device containing 16.5 pounds of buoyancy and one polypropylene line no less than 30 feet in length attached thereto;

(ii) No less than one pole of not less than ten feet in length with a blunt hook attached thereto; and

(B) The minors so employed have been adequately instructed in the use of such equipment;

(C) There is provision made that no minor employee ever be required to work out of sight and hearing of another employee; and

(D) There is located at the site of the work and conspicuously displayed an alarm device adequate to alert all employees on the job site to the existence of a perilous situation.

(b) Minors may not be employed on or around fishing vessels except under the following conditions:

(A) Minors of 16 and 17 years of age may be employed as assistants on chartered fishing or pleasure boats;

(B) Minors 14 and 15 years of age may be employed at dock areas used by chartered fishing or pleasure boats; and

(C) Minors may be employed on commercial fishing vessels without an employment certificate when employed and supervised by the minors' grandfather, grandmother, father, mother, brother, sister, uncle, or aunt.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 142, f. 6-28-73, ef. 7-15-73; BL 185, f. 1-30-76, ef. 2-1-76; BL 11-1978(Temp), f. 9-18-78, ef. 9-19-78; BL 14-1978, f. 12-13-78, ef. 1-17-79; BL 2-1979, f. & ef. 2-13-79; BL 1-1985, f. 2-21-85, ef. 3-1-85; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**839-021-0102**

**Occupations and Types of Work Declared Hazardous for Minors Under 16 Years of Age**

(1) Pursuant to OAR 839-021-0097(1)(a), the Commission hereby declares the following occupations and types of work to be hazardous and any employment by minors under 16 years of age is hereby prohibited:

- (a) Blast furnaces;
- (b) Breweries;
- (c) Bridge operations;
- (d) Briquet plants;
- (e) Building cleaning (exterior);



- (f) Cattle handling;
- (g) Coal plants or bunkers;
- (h) Cold storage plants;
- (i) Commercial docks;
- (j) Construction (alteration, repair, painting, or demolition of buildings, bridges, and structures);
- (k) Creosoting works;
- (l) Distilleries;
- (m) Electric power plants, lines;
- (n) Electric light plants, lines;
- (o) Engineering works (construction, improvement, alteration, or repair of steam plants, water power plants, telephone, telegraph, or electric plants or lines or of railroads, streets, highways, sewers, harbors, docks, or canals);
- (p) Firefighting;
- (q) Foundries;
- (r) Garbage works;
- (s) Gas works;
- (t) Grain elevators;
- (u) Gravel or sand plant or bunker;
- (v) Ice plants;
- (w) Railroads;
- (x) Land clearing (with blasting or presence of heavy equipment);
- (y) Logging operations;
- (z) Longshoring;
- (aa) Lumber loading;
- (bb) Mechanical amusements;
- (cc) Milk condenseries;
- (dd) Mines;
- (ee) Moving buildings, bridges, and structures;
- (ff) Peace officer work;
- (gg) Powder works;

- (hh) Quarries;
- (ii) Reduction works;
- (jj) Rock crusher;
- (kk) Smelters;
- (ll) Stockyards;
- (mm) Surveying;
- (nn) Tanneries;
- (oo) Tree surgery;
- (pp) Well digging and drilling;
- (qq) Window cleaning (outside above ground);
- (rr) Wineries;
- (ss) Wood cutting, sawing.

(2) The following occupations and types of work are declared to be hazardous for any minor under 16 years of age when the work is performed in rooms or areas having power-driven machinery:

- (a) Boat repair shops;
- (b) Canneries;
- (c) Chop mills;
- (d) Creameries;
- (e) Cycle repair shops;
- (f) Electrotyping plants;
- (g) Engraving plants;
- (h) Factories (manufacturing, repair, alteration);
- (i) Feed mills;
- (j) Flour mills;
- (k) Garages;
- (l) Grain warehouses;
- (m) Irrigation works;
- (n) Laundries;
- (o) Lithographing plants;

- (p) Mills;
  - (q) Motor repair shops;
  - (r) Photoengraving plants;
  - (s) Printing plants;
  - (t) Shipbuilding operations;
  - (u) Stereotyping plants;
  - (v) All kinds of work in workshops or any premise, room, or place where power-driven machinery is used in or incidental to adapting articles or goods for sale.
- (3) The following occupations or types of work are declared to be hazardous for any minor under 16 years of age and these minors are permitted to perform office work only in the following operations:
- (a) Auto wrecking yards;
  - (b) Junk dealers;
  - (c) Motor vehicle (transportation);
  - (d) Lumbering;
  - (e) Water works.

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 116, f. 10-20-71, ef. 11-1-71, Renumbered from 839-021-0045; BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0104**

**Occupations Particularly Hazardous for the Employment of Minors Between 16 and 18 Years of Age or Detrimental to Their Health or Well-Being**

No employer shall employ a minor between 16 and 18 years of age in any occupation declared particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being, except under terms and conditions specifically set forth by rules of the Wage and Hour Commission. Those occupations set out in **Title 29 CFR, Part 570.51** to and including **Part 570.68** are hereby adopted as occupations particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health and well-being and the regulations pertaining to these occupations set out in **Title 29 CFR, Part 570.51** to and including **Part 570.68** are hereby adopted and incorporated by reference herein and are attached as **Appendix 1**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

[ED. NOTE: The Appendix referenced in this rule is not printed in the OAR Compilation. Copies are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 182, f. & ef. 11-14-75; BL 6-1988, f. & cert. ef. 4-12-88

## **General Record Keeping Requirements**

### **839-021-0170**

#### **General Requirements**

(1) Every employer employing minors shall maintain and preserve records containing the following information and data with respect to each minor employed:

(a) Name in full, as used for social security recordkeeping purposes and on the same record, the minor's identifying symbol or number if such is used in place of name on any time, work or payroll records;

(b) Home address, including zip code;

(c) Date of birth;

(d) Sex and occupation in which the minor is employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss or Ms.);

(e) Time of day and day of week on which the minor's workweek begins;

(f) Hours worked each workday and total hours worked each workweek;

(g) Date the minor became employed by the employer and date employment was terminated.

(2) In addition to the records referred to in section (1) of this rule, every employer employing minors under 16 years of age shall maintain and preserve records containing the following information and data with respect to each minor under 16 years of age employed:

(a) The time of day that the minor began working and the time of day that the minor stopped working;

(b) A schedule of the maximum number of hours to be worked each day and each week by each minor under 16 years of age.

(3) The records required to be maintained and preserved in sections (1) and (2) of this rule are required in addition to and not in lieu of any other recordkeeping requirement contained in OAR to 839-021-0500. However, when one record will satisfy the requirements of more than one rule, only one record shall be required.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.307

Hist.: BL 6-1988, f. & cert. ef. 4-12-88

### **839-021-0175**

#### **Records Availability**

(1) All records required to be preserved and maintained by OAR 839-021-0001 to 839-021-0500 shall be preserved and

maintained for a period of at least two years.

(2) All employers shall keep the records required by OAR 839-021-0001 to 839-021-0500 in a safe and accessible place.

(3) All records required to be preserved and maintained by OAR 839-021-0001 to 839-021-0500 shall be made available for inspections and transcription by the Executive Secretary or duly authorized representative of the Executive Secretary.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.307 & 653.545

Hist.: BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0180**

**Posting Requirements**

- (1) Every employer required to maintain a schedule of the maximum hours of work by minors under 16 years of age, shall post the schedule in a conspicuous place where all such minors have easy access to it.
- (2) Every notice required by any law or rule to be posted at the employer's place of business and that has applicability to the employment of minor employees shall be displayed in a conspicuous place where all minors have easy access to them.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.315(4)

Hist.: BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0185**

**Verification of Age**

- (1) The employer shall verify the minor's age by requiring the minor to produce an acceptable proof of age document.
- (2) As used in these rules, an acceptable proof of age document includes, but is not limited to:
  - (a) A birth certificate issued by any state, county, or municipal authority;
  - (b) A hospital record of birth;
  - (c) A state-issued driver's license or a state-issued I.D. card with a photograph, or information, including date of birth;
  - (d) A U.S. Military Card;
  - (e) A U.S. Passport;
  - (f) A Certificate of U.S. Citizenship;
  - (g) A Certificate of Naturalization;

- (h) An unexpired foreign passport with attached Employment Authorization;
  - (i) An Alien Registration Card with photograph;
  - (j) A Social Security Administration record indicating date of birth;
  - (k) A Certificate of Age issued by the U.S. Department of Labor;
  - (l) A Work Permit card issued by the Bureau of Labor and Industries prior to September 9, 1995;
  - (m) A baptismal record;
  - (n) Other acceptable proof approved by the bureau.
- (3) The employer shall retain a record of the document used to verify the minor's age pursuant to the provisions of OAR 839-021-0170 and 839-021-0175. A notation in the minor's personnel file of which document was used to verify the minor's age or retaining a copy of the document shall satisfy this requirement.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**Issuance of Employment Certificates For the Employment of Minors**

**Minors 14 Through 17 Years of Age**

**839-021-0210**

**General**

OAR 839-021-0210 to 839-021-0224 provide the method of issuing employment certificates to employers for the employment of minors 14 through 17 years of age and are promulgated by the commission pursuant to ORS 653.307.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 117, f. 10-20-71, ef. 11-1-71, Renumbered from 839-021-0105; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**839-021-0220**

**Employment Certificates for the Employment of Minors 14 Through 17 Years of Age**

- (1) Unless otherwise provided by rule of the Commission, no minor 14 through 17 years of age shall be employed or permitted to work unless the employer:
- (a) Verifies the minor's age by requiring the minor to produce acceptable proof of age as prescribed by these rules; and

(b) Complies with the provisions of this rule.

(2) No employer shall employ a minor without having first obtained a validated employment certificate from the Bureau of Labor and Industries. When the employer employs minors in more than one establishment, a separate validated employment certificate shall be obtained for each establishment. As used in this section, "establishment" means a distinct physical place of business. If a minor is employed by one employer to perform work in more than one location, the minor shall be considered employed in the establishment where the minor receives management direction and control.

(3) Application forms for an employment certificate may be obtained from any office of the Bureau of Labor and Industries or by contacting the Child Labor Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #35, Portland, OR 97232, ((503)731-4074, Ext. 225).

(4) The Bureau of Labor and Industries shall issue a validated employment certificate upon review and approval of the application. Except as provided in OAR 839-021-0221, the validated employment certificate shall be effective for one year from the date it was issued, unless it is suspended or revoked.

(5) If the bureau's review of any application indicates a failure to comply with any law or rule pertaining to the employment of minors or any order of the commission, the bureau shall deny the application and inform the employer of the reason(s) for the denial.

(6) If, after the issuance of a validated employment certificate, the duties of the minors are changed from those originally authorized under the employment certificate, the employer shall submit a Notice of Change in Duties form to the Child Labor Unit, Wage and Hour Division of the Bureau of Labor and Industries. The Notice of Change in Duties form shall be submitted within 15 days of the change on a form provided by the bureau. The bureau will approve or deny the change in duties and notify the employer. If the bureau denies the changes, the employer shall immediately reassign any affected minor to approved duties or terminate the minor's employment.

(7) The employer shall apply for a validated employment certificate once each year by filing a renewal application on a form provided by the Bureau of Labor and Industries. The renewal application shall be received by any office of the bureau no later than the expiration date of the validated employment certificate.

(8) The employer shall post the validated employment certificate in a conspicuous place where all employees can readily see it.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 117, f. 10-20-71, ef. 11-1-71, Renumbered from 839-021-0115; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

## **839-021-0221**

### **Forms**

(1) The application form for an employment certificate shall include:

(a) The name and address of the employer;

(b) The name and address of the company representative completing the application form;

(c) An estimate of the number of minors to be employed during the twelve month period covered by the application;

(d) A description of the duties to be performed by the minor(s);

- (e) A description of the machinery or other equipment to be used by the minor(s);
  - (f) Whether 14 and 15 year old minors are to be employed.
- (2) The Notice of Change in Duties will include:
- (a) The name and address of the employer;
  - (b) The name and address of the company representative completing the notice;
  - (c) A description of the change in duties previously authorized;
  - (d) A description of any machinery or equipment to be used by any minor.
- (3) The Renewal Application for an employment certificate shall include:
- (a) The name and address of the employer;
  - (b) The name and address of the company representative completing the application;
  - (c) The actual number of minors employed during the preceding 12 month period;
  - (d) An estimate of the number of minors to be employed during the 12 month period covered by the application;
  - (e) A description of the duties to be performed and the machinery and equipment to be used if different from the previous year or if there are no changes in duties, a statement to that effect.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**839-021-0222**

**Distribution of Forms**

- (1) The bureau shall send a summary of the child labor laws and rules to all employers applying for an employment certificate.
- (2) The bureau shall send to employers, with the validated employment certificate, a Notice of Change in Duties form with an explanation of its use.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**839-021-0223**

**Staggered Implementation of Oregon Laws, Chapter 133 (1995)**



(1) In order to provide for an orderly, efficient method for implementing Oregon Laws, Chapter 133 (1995), the expiration dates of employment certificates for employers applying for certificates prior to January 1, 1996, shall be as follows: First Letter of Company Name -- Expiration of Initial Employment Certificate:

- (a) A through B -- April 30, 1996;
- (b) C -- May 31, 1996;
- (c) D through E -- June 30, 1996;
- (d) F through G -- July 31, 1996;
- (e) H through J -- August 31, 1996;
- (f) K through L -- September 30, 1996;
- (g) M -- October 31, 1996;
- (h) N through O -- November 30, 1996;
- (i) P through R -- December 31, 1996;
- (j) S -- January 31, 1997;
- (k) T -- February 28, 1997;
- (l) U through Z -- March 31, 1997.

(2) Thereafter, employment certificate renewals shall be issued within 30 days of receipt of the application, with an expiration date of the last day of the twelfth month following the effective date of the certificate.

(3) Employers applying for employment certificates on or after January 1, 1996, shall be issued an employment certificate to expire on the last day of the twelfth month following the effective date of the certificate.

(4) Notwithstanding section (1) of this rule, employers applying for an employment certificate prior to January 1, 1996, may request an expiration date other than as provided therein. The bureau may consider the request and, for good cause shown, may establish an alternative expiration date of between April 30, 1996, and March 31, 1997. As used in this paragraph, "good cause" shall include a legitimate business purpose such as dates conforming to the fiscal year of the employer.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**Minors Under 14 Years of Age**

**839-021-0240**

**General**

OAR 839-021-0240 to 839-021-0246 provide the method of issuing Employment Permits to minors under 14 years of

age and are promulgated by the commission pursuant to ORS 653.320(4).

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 115(2), f. 10-20-71, ef. 11-1-71, Renumbered from 839-021-0135; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

## 839-021-0246

### Employment Permit

(1) No child under 14 years of age shall be employed or permitted to work unless the employer has been issued a validated Employment Permit by the Commission authorizing the child to work for that particular employer.

(2) A minor, under 14 years of age, and an employer desiring to employ the minor under the provisions of ORS 653.320(4) exempting the minor from the provisions of section (1), (2), or (3) of ORS 653.320, must make a joint application for an Employment Permit and shall deliver or mail the application to the Administrator of the Wage and Hour Division, 800 N.E. Oregon #32, Portland, OR 97232. The application shall be submitted on a form supplied by the Wage and Hour Division and available at any office of the Oregon Bureau of Labor and Industries. The application shall be submitted by the employer or a parent or legal guardian of the minor. Each application shall include:

- (a) Minor's name and residence address, along with name and address of parents or legal guardian;
- (b) Minor's date of birth, along with proof of age, consisting of either a certified copy of a birth certificate, hospital certificate, baptismal certificate, or other acceptable proof of age;
- (c) Social Security Number;
- (d) Last grade in school completed and the school currently attended and its address;
- (e) Name and address of prospective employer and nature of such employer's business;
- (f) Amount and nature of compensation to be paid;
- (g) The maximum number of hours proposed to be worked on any given day, the maximum number of hours to be worked in any work week, and the maximum number of days proposed to be worked in any work week;
- (h) A complete description of the work proposed to be performed;
- (i) A separate certification by the employer to the effect that the minor will be continuously supervised by a responsible adult.

(3) Upon the receipt of an application, the Administrator of the Wage and Hour Division shall investigate the circumstances of the proposed employment and the information contained in the application. If the Administrator determines that the character of the employment is suitable and that the employment will not adversely affect the physical and moral well-being of the minor, the Administrator shall issue an Employment Permit, setting out limitations concerning the employment deemed appropriate by the Administrator, which limitations should be consistent with the provisions of section (4) of this rule. The Administrator shall advise the employer, minor and the minor's parents or legal guardian of the date upon which the Commission shall adopt, vacate, or modify the Employment Permit.

(4) Employment permits for the employment of minors under 14 years of age shall be issued only in circumstances where the following provisions are complied with:

- (a) Hours of employment for minors under 14 years of age during the term when schools are in session will be limited to not more than two hours, after school hours; not more than six hours on Saturdays and Sundays; and not more than 18 hours per week, not to exceed five workdays;
- (b) During any vacation period extending over a period of two weeks or longer, minors under 14 years of age may not be employed more than eight hours in any one day and not more than 40 hours in one week and not more than five work days in one week;
- (c) Minors under 14 years of age cannot be employed in any enterprise subject to the Federal Fair Labor Standards Act, **(29 U.S.C. 201, et seq.)**, in any establishment where alcoholic beverages are dispensed or served, in any theater or amusement park, in any work that involves the minor in canvassing door to door, or in any establishment catering to adults only;
- (d) Minors under 14 years of age cannot be employed before the hour of 8 a.m., nor after the hour of 6 p.m.

[Publications:The publication(s) referred to or incorporated by reference in this rule are available from the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.320

Hist.: BL 6-1978, f. & ef. 8-7-78; BL 6-1988, f. & cert. ef. 4-12-88

**Reporting**

**839-021-0248**

**Reports from Employers Employing Minors**

Employers employing minors shall file reports that may be required by the Commission.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.545(1)

Hist.: BL 6-1988, f. & cert. ef. 4-12-88

**Special Rules for Employing Minors**

**839-021-0255**

**Special Rules for Temporary Employment of Several Minors for a Short Duration**

- (1) As used in this rule, unless the context requires otherwise:
  - (a) "Temporary employment of a short duration" means employment which terminates on or by the tenth day from the date of hire.
  - (b) "Several minors" means 10 or more minors.

(2) In circumstances involving temporary employment of a short duration where the employment of several minors is proposed, the prospective employer may comply with the provisions of rules OAR 839-021-0210 to 839-021-0248 or may address a letter application to the Administrator of the Wage and Hour Division setting out the full and complete circumstances of the proposed employment. The administrator shall investigate the proposed employment and if the administrator determines that the character of the employment is suitable and that such employment will not adversely affect the physical and moral well-being of the minors, the administrator shall issue a special permit to the employer. In the case of those minors under 14 years of age, if a regularly scheduled meeting of the Wage and Hour Commission intervenes between the date of the application and the date of the proposed employment, the administrator shall submit to the commission a report of the facts and circumstances of the employment, and the commission may adopt, vacate, or modify any special permit which may have been issued by the administrator.

(3) Notwithstanding the provisions of subsection (1)(a) of this rule, the administrator, for good cause shown, may issue a special permit pursuant to section (2) of this rule for more than 10 days if the administrator determines that the circumstances of the proposed employment otherwise satisfy section (2) of this rule.

(4) Notwithstanding the provisions of section (2) of this rule, the administrator, for good cause shown, may issue a special permit in circumstances other than as prescribed in section OAR 839-021-0246(4) when it appears to the administrator that the employment opportunities of the minor would be impaired and the employment, as determined by the administrator will not adversely affect the physical and moral well-being of the minor. The administrator shall report the facts and circumstances of the employment to the commission, and the commission may adopt, vacate, or modify any special permit issued under this section.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 6-1988, f. & cert. ef. 4-12-88; BL 14-1988(Temp), f. 8-2-88, cert. ef. 8-12-88; BL 1-1989, f. & cert. ef. 2-6-89; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**Employment of Minors in Door to Door Sales**

**839-021-0265**

**Employment of Minors to Act as Canvassers, Peddlers or Outside Salespersons from House to House**

(1) No person from 16 to 18 years of age may be employed to act as a canvasser, a peddler, or an "outside salesman" as defined in ORS 653.010(7), from house to house, unless the employer obtains and maintains a validated registration certificate issued by the Bureau of Labor and Industries.

(2) Employers may apply for a registration certificate at any time and must apply to renew their registration by July 1 of each year. The registration will be effective through the following June 30.

(3) To register, an employer may obtain an application form from any office of the Bureau of Labor and Industries. Upon completion, the application shall be filed with the Administrator, Wage and Hour Division, 800 N.E. Oregon #32, Portland, OR 97232. The application form shall be prescribed by the Executive Secretary or designee and shall include but not be limited to space for:

- (a) The employer's name, permanent address, and telephone number;
- (b) The Oregon address and telephone number if different from permanent address and telephone number;
- (c) A contact person's name, address and telephone number;

- (d) A brief history of company;
  - (e) A complete description of the work to be performed by minors who are 16 to 18 years of age;
  - (f) An estimate of the ages and of the number of minors under 18 years of age that may be employed during the period of certification;
  - (g) A statement that the employer agrees to comply with the provisions of ORS 653.010 to 653.545, OAR 839-021-0001 to 839-021-0265 and any terms and conditions specified by the Commission, the Executive Secretary or the Executive Secretary's designee;
  - (h) The name and address of the employer's workers' compensation insurer and policy or binder number;
  - (i) Other information which will assure the Executive Secretary that employment of minors by the employer shall be in compliance with any law or rule concerning the employment of minors; and
  - (j) The signature of the applicant.
- (4) In the case of a renewal application, the employer shall submit with the application, a report of minors employed during the previous year. The report shall include, but not be limited to, the following information:
- (a) The number of minors employed;
  - (b) Whether any workers' compensation insurance claims were filed by or for any minors while employed by the employer and the number of such claims; and
  - (c) Other information as may be deemed necessary by the Executive Secretary or designee.
- (5) The Executive Secretary or designee shall conduct an investigation of the facts and circumstances set out in the application for the registration certificate and may issue a certificate to the employer provided the provisions of OAR 839-021-0001 to 839-021-0265 have been met. The Executive Secretary or designee may set such terms and conditions upon the issuance of the certificate as the Executive Secretary or designee deems necessary or appropriate. The Executive Secretary or designee may refuse to issue or renew a certificate when it appears to the Executive Secretary or designee that the provisions of OAR 839-021-0001 to 839-021-0265 are not met or when the employer has violated any law or rule pertaining to the employment of minors. The Executive Secretary or designee shall report on the investigation into the facts and circumstances of the application, at the next regularly scheduled meeting of the Commission following the investigation. The Commission may adopt, vacate, or modify the Executive Secretary's or designee's disposition of the application.
- (6) If the facts and circumstances or conditions under which the certificate is issued change, the employer shall notify the Executive Secretary or designee of the change. The Executive Secretary may modify the terms and conditions of the certificate, if any, and will report to the Commission as in section (5) of this rule.
- (7) The Executive Secretary or designee may require the removal of minors from the employment of a registered employer when it appears to the Executive Secretary or designee that the employer has failed to comply with any law or rule pertaining to the employment of minors. A report of such action shall be made to the Commission at its next regularly scheduled meeting. The Commission may adopt, vacate or modify such action.
- (8) Prior to the removal of minors as indicated in section (7) of this rule, the Executive Secretary or designee shall consider the following factors:
- (a) The past history of the employer in taking all necessary measures to prevent or correct violations of statutes and rules;
  - (b) Past violations, if any, of statutes and rules;

(c) The magnitude and seriousness of the violation; and

(d) Any other mitigating circumstances.

(9) When a registered employer is required by the Executive Secretary or designee to remove the minor employees from employment, the employer may request a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

(10) The Commission may revoke the registration certificate when it determines that the employer failed to comply with any rule of the commission or law covering the employment of minors. The employer shall be accorded the opportunity of a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

(11) In addition to all other rules of the Commission, employers employing persons from the age of 16 to the age of 18 to act as a canvasser, peddler or "outside salesman" as defined in ORS 653.010(7), from house to house shall provide each person, before the person begins work, with an identification card. The identification card shall be shown to each customer or potential customer of the person employed to act as a canvasser, peddler or "outside salesman" by the person so employed. The identification card shall be on a form prescribed by the Executive Secretary. The identification card shall include:

(a) A picture of the employee;

(b) The name of the employee;

(c) The name and local address of the employer;

(d) A statement to the effect that the employee is authorized to represent the employer as a canvasser, peddler or "outside salesman";

(e) A statement to the effect that the employer is registered with the Bureau of Labor and Industries, 800 N.E. Oregon #32, Portland, OR 97232 (731-4074);

(f) A statement that the card is not valid for any other employer; and

(g) Other information as the Executive Secretary may require to carry out the purpose of this subsection.

(12) Notwithstanding OAR 839-021-0067, minors employed to act as a canvasser, a peddler or an "outside salesman", as defined in ORS 653.010(7), from house to house shall not be employed past the hour of 9 at night.

(13) The transportation of a minor employed to act as a canvasser, peddler, or "outside salesman" to and from the job site shall be provided by the employer and shall occur no later than 9 at night. In the case of a minor who wants to provide his/her own transportation, the employer shall obtain the written consent of the minor's parents or legal guardian and maintain such written consent in the employer's files.

(14) No minor employed to act as a canvasser, peddler, or "outside salesman" may be transported to another state without the express written consent of a parent or legal guardian of the minor.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.315(2)(d)

Hist.: BL 1-1985, f. 2-21-85, ef. 3-1-85; BL 6-1988, f. & cert. ef. 4-12-88

## **Employment of Minors in Agriculture**

**Employment Permits Generally**

**839-021-0276**

**Employment Certificates**

Except for minors employed to operate or assist in the operation of power-driven farm machinery, to ride in or on power-driven farm machinery or to ride in or on conveyances connected to power-driven farm machinery, OAR 839-021-0210 to 839-021-0224 do not apply to the employment of minors in agriculture.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 5-1987, f. & ef. 2-20-87; BL 6-1988, f. & cert. ef. 4-12-88; BL 11-1991, f. & cert. ef. 10-31-91; BL 4- 1995, f. & cert. ef. 11-3-95

**839-021-0277**

**Employment Certificate when Operating Power-Driven Farm Machinery and when Riding in or on Conveyances connected to Power-Driven Farm Machinery**

Employers employing minors to operate power-driven farm machinery, to ride in or on power-driven farm machinery or to ride in or on equipment, trailers, or similar conveyances which are connected to power-driven farm machinery shall not permit the minor to operate power-driven farm machinery, assist in the operation of the machinery, to ride in or on the machinery or to ride in or on equipment, trailers or similar conveyances which are connected to power-driven farm machinery, until the employer has complied with OAR 839-021-0280 or 839-021-0282 as the case may be.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 5-1987, f. & ef. 2-20-87; BL 6-1988, f. 4-12-88, cert. ef. 1-1-89; BL 11-1991, f. & cert. ef. 10-31-91; BL 4-1995, f. & cert. ef. 11-3-95

**Power-Driven Farm Machinery**

**839-021-0280**

**Operation of Power-Driven Farm Machinery**

- (1) Minors may be employed to operate or assist in the operation of power-driven farm machinery or to ride in or on power-driven farm machinery for the purpose of transporting, sorting, delivering, or otherwise processing farm products without an employment certificate when the minor is employed by their parent or person standing in the place of their parent as provided by OAR 839-021-0297.
- (2) Except as provided in section (1) of this rule, no minor under 18 years of age may be employed to operate or assist in the operation of power-driven farm machinery of any kind. However, a minor under 18 years of age who has a "Certificate of Training" on tractor operation or tractor and machinery operation issued by a 4-H Extension Service Program, or an approved secondary vocational agriculture program may operate or assist in the operation of farm

tractors and machinery.

(3) As used in section (2) of this rule, "assist(ing) in the operation of power-driven farm machinery," includes starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation of the machinery.

(4) Prior to the employment of minors to operate power-driven farm machinery, in addition to obtaining the Employment Certificate pursuant to OAR 839-021-0220, the employer shall also obtain proof that the minor has a "Certificate of Training" on the operation of tractors or tractors and machinery operation pursuant to section (2) of this rule. Employers shall retain a copy of such proof for two years from the date the minor was employed.

(5) In the event that neither a 4-H Extension Service nor vocational agricultural safety training program for the "Certificate of Training," as required in section (2) of this rule, is available within 35 miles of a minor's residence, a 16 or 17 year-old minor may be employed to operate or assist in the operation of power-driven farm machinery otherwise prohibited if all of the following conditions are met:

- (a) The minor is 16 years of age or older and the employer has verified the minor's age;
- (b) The employer has completed an Employment Certificate application, pursuant to OAR 839-021-0220; and
- (c) The minor, the minor's parent or guardian, and the employer of the minor sign a statement on a form prescribed by the Commission certifying to all of the following:
  - (A) The training is not available within 35 miles of the minor's residence;
  - (B) The employer has provided to the minor not less than eight hours of instruction, four hours of which must be "hands-on" training under the supervision of an adult experienced in the safe and proper operation of the specific equipment the minor is to use before the minor begins work including, but not limited to, training related to the normal working hazards in agriculture, the equipment's instrument panel, equipment controls, daily maintenance and safety checks, starting and stopping the equipment, control of the equipment on different terrain, and the safe operation of hitches, power take-off and hydraulic controls, where applicable; and
  - (C) The employer agrees to supervise the minor continuously and closely while the minor operates the power-driven farm machinery, or, where such supervision is not feasible, agrees to check on the safety of the minor at intervals of no more than two hours during the operation of the equipment by the minor.

(6) The certified statement and Employment Certificate application required in section (5) shall be submitted together to the Child Labor Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #35, Portland, OR 97232.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307 & 653.365

Hist.: BL 5-1987, f. & ef. 2-20-87; BL 6-1988, f. 4-12-88, cert. ef. 1-1-89; BL 4-1990, f. & cert. ef. 3-12-90; BL 11-1991, f. & cert. ef. 10-31-91; BL 4-1995, f. & cert. ef. 11-3-95

**839-021-0282**

**Riding in or on Conveyances Connected to Power-Driven Farm Machinery**

(1) Except as provided in OAR 839-021-0280(1) and (2), no minor under 18 years of age may be employed to ride in or on equipment, trailers or similar conveyances which are connected to power-driven farm machinery for the purpose of transporting, sorting, delivering or otherwise processing farm products. However, when a minor 14 years of age or older



has not obtained the "Certificate of Training" referred to in OAR 839-021-0280(2), the employer shall provide appropriate safety training as required by OR-OSHA rules and these rules.

(2) A minor 14 years of age or older who has not obtained a "Certificate of Training" as required by OAR 839-021-0280(2) may be employed to ride in or on equipment, trailers or similar conveyances which are connected to power-driven farm machinery for the purpose of transporting, sorting, delivering, or otherwise processing farm products, if all of the following conditions are met:

- (a) The employer has verified the minor's age;
  - (b) The employer has completed an Employment Certificate application, pursuant to OAR 839-021-0220; and
  - (c) The employer has provided to the minor not less than two hours of safety training relating to the specific machinery which the minor will be employed to ride in or on before the minor begins work including, but not limited to, training related to the normal working hazards in agriculture, safe equipment mounting and dismounting, unsafe practices, and safety features of the machinery; and
  - (d) The employer shall closely supervise the minor while the minor rides in or on conveyances pulled by power-driven machinery. The employer shall check on the safety of the minors at intervals of not less than two hours.
- (3) The Employment Certificate application required in section (2) shall be submitted to the Child Labor Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #35, Portland, OR 97232.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.307 & 653.365

Hist.: BL 5-1987, f. & ef. 2-20-87; BL 6-1988, f. 4-12-88, cert. ef. 1-1-89; BL 4-1990, f. & cert. ef. 3-12-90; BL 4-1995, f. & cert. ef. 11-3-95

**Applicability of Other Rules to Employment of Minors in Agriculture**

**839-021-0285**

**Compliance with Other Rules**

Employers employing minors in agriculture shall comply, unless specifically excluded by ORS 653.305 to 653.370 or these rules, with all rules pertaining to the employment of minors, including, but not limited to:

- (1) Rules pertaining to rest periods. (OAR 839-021-0072)
- (2) Rules pertaining to meal periods. (OAR 839-021-0072)
- (3) Rules pertaining to working conditions and weight lifting. (OAR 839-021-0087 and 839-021-0092)
- (4) Rules pertaining to hazardous occupations for minors under 16 years of age. (OAR 839-021-0102)
- (5) Rules pertaining to hazardous occupations for minors between 16 and 18 years of age. (OAR 839-021-0104)

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 5-1987, f. & ef. 2-20-87; BL 1-1989, f. & cert. ef. 2-6-89; BL 6-1991(Temp), f. & cert. ef. 6-21-91; BL 11-1991, f. & cert. ef. 10-31-91

## **Employment of Minors in Agricultural Warehouses**

**839-021-0287**

### **Agricultural Warehouses**

(1) Minors under 16 years of age shall not be employed in any room or place in an agricultural warehouse where power-driven machinery is used to process agricultural commodities.

(2) Minors 16 and 17 years of age may be employed to operate or assist in the operation of power-driven machinery in an agricultural warehouse provided:

(a) The employment is in connection with the processing of the agricultural commodity produced by the farmer for whom the minor is employed; and

(b) The employment is performed on the farm and for the farmer for whom the minor is employed; and

(c) The minor has been trained in the safe operation of the machinery as required by this rule.

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

(a) "Operate(ing)" power-driven machinery includes driving a motorized vehicle;

(b) "Assisting in the operation of power-driven machinery" includes starting, stopping, adjusting, feeding or any other activity involving physical contact associated with the operation of the machinery.

(4) Prior to the employment of minors to operate or assist in the operation of power-driven machinery in an agricultural warehouse, the employer shall obtain proof that the minor has been trained in safe handling and operation of the machinery as required by OR-OSHA and these rules. The proof of training may be a document issued by a public or private entity other than the farmer attesting to the training. Employers shall retain a copy of such proof for two years from the date the minor was employed.

(5) In the event that the safety training required by this rule is not available within 35 miles of the minor's residence, a 16 or 17 year old minor may be employed to operate or assist in the operation of power-driven machinery in an agricultural warehouse provided that subsections (2)(a) and (b) of this rule are continuously met and provided further that the employer provides to the minor before the minor begins work not less than six hours of instruction, two hours of which must be "hands on" training under the supervision of an adult experienced in the safe operation of the specific machinery the minor is to use. The training should include, but not be limited to, training related to the normal working hazards in the warehouse, the machinery's instrument panel, the machinery's controls, daily maintenance and safety checks, starting and stopping the machinery, control of the machinery, and the safe operation of hitches, power take-off and hydraulic controls, where applicable.

(6) The employer shall provide close supervision of minors operating or assisting in the operation of the power-driven machinery.

(7) As used in this rule, an "agricultural warehouse" includes a building in which the processing of agricultural commodities is performed. Processing of agricultural commodities includes cleaning, packaging, storing and shipping of the commodities. For purposes of this paragraph, covered areas attached to the warehouse are considered to be part of the warehouse.

(8) As used in this rule, "employment in an agricultural warehouse" means employment confined to the inside of the

building where the work is performed. A loading dock attached to the building is considered to be part of the building and employment on the dock is employment in the warehouse. However, employment close to or about the building or in or on structures not attached to the warehouse is not considered to be employment in the warehouse.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305 & 653.360

Hist.: BL 4-1995, f. & cert. ef. 11-3-95

**Hours Worked by Minors Employed in Agriculture**

**839-021-0290**

**Hours of Work of Minors Under 16 Years of Age in Agriculture**

- (1) Minors under 16 years of age shall not be employed to work in agriculture while the school they attend is in session. As used in this rule, school is in session during the hours set by the school district in which the minor resides while employed in agriculture in accordance with the official school calendar of the district. A school week is any week in which school is in session for at least three days.
- (2) The hours of work by minors in agriculture under 16 years of age shall not exceed:
- (a) Three hours a day on school days;
  - (b) Ten hours a day on non-school days;
  - (c) 25 hours a week on school weeks;
  - (d) Ten hours per day, 60 hours per week from the last day of the most recently completed school year of the district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture;
  - (e) Six days in any week at any time.
- (3) Notwithstanding section (2) of this rule, when a minor under 16 years of age is employed in agriculture to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, the maximum number of hours the minor may work shall not exceed:
- (a) Three hours a day on school days;
  - (b) Eight hours a day on non-school days;
  - (c) 18 hours a week on school weeks;
  - (d) From the last day of the most recently completed school year of the school district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school year of the district in which the minor resides while employed in agriculture:
    - (A) Ten hours per day, 60 hours a week during the harvest season;

- (B) Ten hours per day, 44 hours per week outside the harvest season;
- (C) A greater number of weekly hours may be permitted when worked outside the harvest season pursuant to an Overtime Permit issued by the commission. However, even though a permit may be issued, the maximum number of hours worked in a week shall not exceed 60.
- (e) Six days in any week at any time.
- (4) Nothing in this rule shall be construed to regulate the daily starting and quitting times on minors under 16 who are employed in agriculture.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.315

Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BL 2-1997(Temp), f. & cert. ef. 7-21-97

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**839-021-0292**

**Hours of Work of Minors 16 and 17 Years of Age in Agriculture**

- (1) When a minor who is 16 or 17 years of age is employed to operate or assist in the operation of power-driven farm machinery or when such minor is employed to ride in or on power-driven farm machinery as provided in OAR 839-021-0276 to 839-021-0285, the maximum number of hours the minor may work shall not exceed:
  - (a) 25 hours a week in school weeks;
  - (b) From the last day of the most recently completed school year of the district in which the minor resides while employed in agriculture to the first day of the school year immediately following the most recently completed school of the district in which the minor resides while employed in agriculture, 60 hours per week;
  - (c) As used in this rule, the terms "school week" and "School is in session" have the same meaning as that provided in OAR 839-021-0290(1).
- (2) Nothing in this rule shall be construed to regulate the daily starting and quitting times of minors who are 16 or 17 years of age who are employed in agriculture.
- (3) Notwithstanding OAR 839-021-0067(1), minors who are 16 or 17 years of age may work up to 60 hours per week in agriculture when school is not in session without a special Emergency Overtime Permit.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 11-1991, f. & cert. ef. 10-31-91; BL 2-1997(Temp), f. & cert. ef. 7-21-97

[ED. NOTE: The text of Temporary rules is not printed in the OAR Compilation. Copies may be obtained from the agency.]

**839-021-0293**

**Hours of Work When School is in Session on a Year Around Basis**

When the schools in the school district in which the minor resides while employed in agriculture during the harvest season are in session on a year around basis and the minor is authorized by the district not to attend classes, for purposes of these rules, school is not in session for the minor.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 11-1991, f. & cert. ef. 10-31-91

**839-021-0294**

**Voc-Ed and Cooperative Education Programs**

When a student under 16 years of age is enrolled in a course of study and training in a cooperative vocational agricultural training program recognized by the State Board of Education, the Commissioner of the Bureau of Labor and Industries may, upon consideration of the circumstances, issue a special permit authorizing the minor to work during the hours that school is in session. The permit shall contain such conditions as the Commissioner deems appropriate. A report of actions taken pursuant to this rule shall be made to the Wage and Hour Commission.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.315(2)(d)

Hist.: BL 11-1991, f. & cert. ef. 10-31-91

**Minors Employed by Parents in Agriculture**

**839-021-0297**

**Parental Exemption**

- (1) Notwithstanding any other rule, minors of any age may be employed by their parent or person standing in the place of their parent at any time in any occupation on a farm owned or operated by their parent or person standing in the place of their parent.
- (2) A person standing in the place of a parent includes but is not limited to the following persons:
  - (a) Grandfather, grandmother, uncle, aunt, brother or sister;
  - (b) An agricultural employer who, pursuant to a written agreement with the parents or other person having custody or control of the minor, employs minor in agriculture who lives and works on a farm during any school vacation period of three weeks or more. The employment arrangement must be agreed to by the parents, or other persons having custody or control of the minor, and agricultural employer and a copy of the written agreement must be filed with the Commission.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.365

Hist.: BL 11-1991, f. & cert. ef. 10-31-91

**Employment of Minors in the Entertainment Industry**

**Procedural Rules**

**839-021-0300**

**Definitions**

As used in OAR 839-021-0300 to 839-021-0380 unless the context requires otherwise:

- (1) "Employment of Minors in the Entertain-ment Industry" shall include engagements as an entertainer or performer in motion pictures, television, radio, still photography, recording, modeling, theatrical appearances, rodeos, musical performances and any other activity wherein minors perform to entertain the public. Such employment shall not include appearances in school activities, church pageants or other appearances where minors are not employed as an entertainer or performer. (Performances arising as a result of lessons or classes, for example, are not normally considered to be employment.)
- (2) "Long Term Employment" means employment lasting or contemplated to last more than five working days.
- (3) "Short Term Employment" means employment lasting or contemplated to last five working days or less.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0305**

**Application of Rules**

OAR 839-021-0001 to 839-021-0285 shall apply to the employment of minors in the entertainment industry. However, when there is a conflict between OAR 839-021-0001 to 839-021-0285 and 839-021-0300 to 839-021-0380, the latter shall apply.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

**Employment Certificates**

**839-021-0310**

**Employment Certificates**

- (1) When minors are employed in the entertainment industry in long term employment, employers shall obtain employment certificates in accordance with OAR 839-021-0210 to 839-021-0248.
- (2) When minors are employed in the entertainment industry in short term employment, employers may obtain a special permit pursuant to OAR 839-021-0255 or in accordance with section (1) of this rule.
- (3) A registered employer is not required to obtain a special permit for minors employed in short term employment when all of the following conditions are met:
  - (a) The employment is in connection with the production of commercial advertising in any media including, but not limited to radio, television, newspaper or magazines; or
  - (b) The employment is in connection with films or other entertainment productions which are produced for education, training, or institutional purposes or documentaries; and
  - (c) The employment does not exceed the hours specified in OAR 839-021-0335; and
  - (d) The duties to be performed are not prohibited by any law or rule; and
  - (e) The permission of a parent has been obtained.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.307

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**839-021-0315**

**Special Hours Variance for Entertainment Employers**

Employers, including registered employers, shall apply for a special hours variance when the contemplated employment will exceed the maximum hours prescribed in OAR 839-021-0335. Employers shall address a letter application to the executive secretary or designee setting out the full and complete circumstances of the proposed employment and the reasons why a special hours variance is being applied for.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**Employer Registration Certificate**

**839-021-0320**

**Registered Employers**

- (1) In circumstances involving the employment of minors in short term employment, employers may satisfy the requirements of OAR 839-021-0310 by obtaining a registration certificate.

(2) Employers may apply for a registration certificate at any time and may apply to renew their registration by July 1 of each year. The registration will be effective through the following June 30.

(3) To register, an employer may obtain an application form from any office of the Bureau of Labor and Industries. Upon completion, the application shall be filed with the Administrator, Wage and Hour Division, 800 N.E. Oregon #32, Portland, OR 97232. The application form shall be prescribed by the Executive Secretary or designee and shall include but not be limited to; space for:

- (a) The employer's name, permanent address, and telephone number; and
- (b) The Oregon address and telephone number if different from permanent address and telephone number; and
- (c) A contact person's name, address and telephone number; and
- (d) A brief history of company; and
- (e) A description of the kinds of events, activities, or productions contemplated which may involve the employment of minors in short term employment; and
- (f) An estimate of the ages and number of minors under 18 years of age that may be employed in short term employment; and
- (g) A brief description of the types of work expected of such minors; and
- (h) A statement that the employer agrees to comply with the provisions of ORS 653.010 to 653.545, OAR 839-021-0001 to 839-021-0500 and any terms and conditions specified by the Commission, the Executive Secretary or the Executive Secretary's designee;
- (i) Name and address of workers' compensation insurer and policy or binder number;
- (j) Other information as will assure the Executive Secretary that employment of minors by the employer shall be in compliance with any law or rule concerning the employment of minors; and
- (k) The signature of the applicant.

(4) No less than 24 hours prior to the employment of minors for a short duration, the registered employer shall notify the Work Permit Section of the Wage and Hour Division which is located at 800 N.E. Oregon #32, Portland, OR 97232. (Telephone Number (503) 731-4074.) The notification may be accomplished by letter, in person or by telephone and shall include:

- (a) Approximate number of minors to be employed;
- (b) Approximate ages of minors to be employed;
- (c) Description of the duties to be performed by the minors;
- (d) Approximate hours the minors will work;
- (e) Dates the minors are to be employed;
- (f) The physical location where the work is to be performed.

(5) In the case of a renewal application, the employer shall submit with the application, a report of minors employed during the previous year. The report shall include but not be limited to the following information:

- (a) The number of minors employed in short term employment pursuant to OAR 839-021-0310(3);



(b) Whether any worker's compensation insurance claims were filed by or for any minors while employed by the employer and the number of such claims;

(c) Other information as may be deemed necessary by the Executive Secretary or designee.

(6) The Executive Secretary or designee shall conduct an investigation of the facts and circumstances set out in the application for the registration certificate and may issue a certificate to the employer provided the provisions of OAR 839-021-0001 to 839-021-0500 have been met. The Executive Secretary or designee may set such terms and conditions upon the issuance of the certificate as the Executive Secretary or designee deems necessary or appropriate. The Executive Secretary or designee may refuse to issue or renew a certificate when it appears to the Executive Secretary or designee that the provisions of OAR 839-021-0001 to 839-021-0500 are not met or when the employer has violated any law or rule pertaining to the employment of minors. The Executive Secretary or designee shall report on the investigation into the facts and circumstances of the application, at the next regularly scheduled meeting of the Commission following the investigation. The Commission may adopt, vacate, or modify the Executive Secretary's or designee's disposition of the application.

(7) If the facts and circumstances or conditions under which the certificate is issued change, the employer shall notify the Executive Secretary or designee of the change. The Executive Secretary may modify the terms and conditions of the certificate, if any, and will report to the Commission as in section (6) of this rule.

(8) The Executive Secretary or designee may require the removal of minors from the employment of a registered employer when it appears to the Executive Secretary or designee that the employer has failed to comply with any law or rule pertaining to the employment of minors. A report of such action shall be made to the Commission at its next regularly scheduled meeting. The Commission may adopt, vacate or modify such action.

(9) Prior to the removal of minors as indicated in section (8) of this rule, the Executive Secretary or designee shall consider the following factors:

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

(b) Past violations, if any, of statutes and rules; and

(c) The magnitude and seriousness of the violation; and

(d) Any other mitigating circumstances.

(10) When a registered employer is required by the Executive Secretary or designee to remove the minor employees from employment, the employer may request a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

(11) The Commission may revoke the registration certificate when it determines that the employer failed to comply with any rule of the commission or law covering the employment of minors. The employer shall be accorded the opportunity of a hearing in accordance with OAR 839-022-0000 to 839-022-0060.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305 & 653.307

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

## **Education**

## 839-021-0325

### School Release/Instruction/Waiver

- (1) The employer must obtain a release from the Superintendent, or designee, of the school district in which the minor's school is located, when the employment requires the minor's absence from school for more than five days.
- (2) The employer must provide minors under 16 years of age with no less than three hours of instruction per day, excluding Saturday and Sunday. The instruction must be provided by a teacher certified to teach in Oregon or, when the minors travel to Oregon from another state, certified to teach such minors in the state where the minors normally attend school. The instruction must be provided under the following circumstances:
  - (a) When the school the minor is attending is in session; and
  - (b) When the employment requires the minor's absence from school for more than five days.
- (3) The employer is responsible for ensuring that adequate instruction is provided to minors under 16 years of age. If adequate instruction is not available at the job site, the employer must provide the minors with relief from their duties for the purpose of attending a school. As used in this section, "adequate instruction" means educational instruction of no less than three hours per day which is provided by a teacher certified to teach as indicated in section (2) of this rule.
- (4) The employer may apply to the Executive Secretary or designee for a special waiver from the provisions of sections (1) and (2) of this rule by submitting a letter application to the Executive Secretary or designee setting out the reasons for the waiver request. In the case of an emergency, the employer may make an application by telephone by calling the Work Permit Section of the Wage and Hour Division at (503) 731-4074 and setting out the reasons for the waiver request. The Executive Secretary or designee may temporarily grant or deny the application. The Commission may adopt, vacate or modify the temporary action at its next regularly scheduled meeting.
- (5) As neither the Wage and Hour Commission nor the Bureau of Labor and Industries has authority to certify persons to teach minors, interested persons should contact the Oregon Teacher Standards and Practices Commission, 630 Center Street, N.E., Suite 200, Salem, OR 97310, (503) 378-3586, for information regarding the teaching certification requirements in Oregon.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305 & 653.315(2)(d)

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

### Supervision

## 839-021-0330

### Supervision

- (1) The employer shall provide appropriate care and supervision of each minor at all times during the minor's employment.
- (2) The employer shall provide a sufficient number of supervisors to ensure the safety of the minors employed. The following number of supervisors are considered to be sufficient to ensure the safety of the minors:
  - (a) At least one supervisor for nine or fewer minors employed;

- (b) At least one supervisor for each multiple of ten, or part thereof, minors employed;
  - (c) The Executive Secretary or designee may require a greater or fewer number of supervisors as individual circumstances warrant.
- (3) Example of the minimum number of supervisors required by section (2) of this rule:
- (a) At least one, not more than nine minors employed -- Numbers of supervisors required: One;
  - (b) At least ten, not more than 19 minors employed -- Number of supervisors required: Two;
  - (c) At least 20, not more than 29 minors employed -- Number of supervisors required: Three;
  - (d) At least 30, not more than 39 minors employed -- Number of supervisors required: Four.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

## **Hours of Work**

### **839-021-0335**

#### **Working Hours**

- (1) No minor shall be employed to work more than six consecutive days.
- (2) For purposes of determining the number of consecutive days of work, the following days shall be considered as work days:
  - (a) Days when the transportation of the minor is more than four hours duration;
  - (b) Days the minor attends school and does not work.
- (3) Example of determining the number of days:
  - (a) Travel Days: Three hours on one day -- School Days: Three -- Work Days: Two -- Total: Five;
  - (b) Travel Days: Five hours on one day -- School Days: Two -- Work Days: Three -- Total: Six.
- (4) The allowed time at the place of employment as used in this section shall include transportation between the employer's studio (or location headquarters) and any location. This time shall also include any makeup, hairdress, wardrobe and rehearsal time as required by the employer.
- (5) When a school which the minor regularly attends is in session, the minor shall be permitted at the place of employment according to the following schedule:
  - (a) Ages 14 - 17: 11 hours a day including rest and meal breaks and, when required, an average of three hours of instruction;
  - (b) Ages 10 - 13: Ten hours a day including rest and meal breaks and, when required, an average of three hours of

instruction;

(c) Ages 6 - 9: Nine hours a day including rest and meal breaks and, when required, an average of three hours of instruction;

(d) Ages 4 - 5: Seven hours a day, or eight hours a day if the minor is transported, including meal breaks and an average of three hours of rest, recreation, and instruction when required. Where the minor is enrolled in the first grade or above, an average of three hours of instruction shall be provided when required.

(6) When the school in which the minor is enrolled is not in session, the minor shall be permitted at the place of employment according to the following schedule:

(a) Ages 14 - 17: 11 hours a day including rest and meal breaks;

(b) Ages 10 - 13: Ten hours a day including three hours of rest, recreation, and meal breaks;

(c) Ages 6 - 9: Nine hours a day including three hours of rest, recreation, and meal breaks;

(d) Ages 4 - 5: Seven hours a day including three hours of rest, recreation, and meal breaks, or up to eight hours a day if the minor is transported;

(e) Ages 2 - 3: Six hours a day including three hours of rest, recreation, and meal breaks;

(f) Ages 1 - 2: Five hours a day including 2-1/2 hours of rest and recreation and meal breaks;

(g) Ages over six months - one: Four hours a day including two hours of rest and recreation and meal breaks;

(h) Ages 15 days - six months: Two hours a day, no more than 20 minutes of which shall be spent as work time.

(7) The minor's working day shall end according to the following schedule:

(a) Ages over 6 months - 5: 6:30 p.m.;

(b) Ages 6 - 8: 7:30 p.m.;

(c) Ages 9 - 10: 9:00 p.m.;

(d) Ages 11 - 14: 9:30 p.m.;

(e) Ages 15 - 17: 10:00 p.m.

on evenings preceding a day in which the minor will attend the school in which he or she is enrolled; 12:30 a.m. in all other circumstances.

(8) Infants over the age of 15 days and up to and including six months may only work between the hours of 9 a.m. and 4:30 p.m.

(9) Minors over the age of six months and under 14 years may not commence their working days prior to 7 a.m. Minors between the ages of 14 and 18 years may not commence their working day prior to 5:30 a.m.

(10) A minor must receive a 12 hour rest break at the end of his or her working day and prior to the commencement of his or her next day of work or attendance at regular school.

(11) The employer may apply to the Executive Secretary or designee for a special waiver from the provisions of sections (1) through (9) of this rule by submitting a letter application to the Executive Secretary or designee setting out the reasons for the waiver request. In the case of an emergency, the employer may make an application by telephone by

calling the Work Permit Section of the Wage and Hour Division at (503)731-4074 and setting out the reasons for the waiver request. The Executive Secretary or designee may temporarily grant or deny the application. The Commission may adopt, vacate or modify the temporary action at its next regularly scheduled meeting.

Stat. Auth.: ORS 653.305

Stats. Implemented: ORS 653.305 & 653.320(4)

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f & cert. ef. 4-12-88; BL 3-1993(Temp), f. & cert. ef. 4-2-93; BL 13-1993, f. 10-29-93, cert. ef. 11-1-93

**Working Conditions**

**839-021-0340**

**Rest Periods**

Employers shall provide minors with appropriate rest periods as defined in OAR 839-021-0072(2).

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305(1)

Hist.: BL 9-1984, f. & ef. 8-7-84

**839-021-0345**

**Meal Periods**

- (1) Employers shall provide minors with appropriate meal periods, free and clear of all duty assignments.
- (2) As used in this rule, "appropriate meal periods" means a period of not less than 30 minutes for rest and meal commencing within the first five hours and one minute after reporting to work.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305(1)

Hist.: BL 9-1984, f. & ef. 8-7-84

**Other Working Conditions**

**839-021-0350**

**Other Working Conditions**

- (1) Employers shall, at any time, allow parents or legal guardians access to their minor children employed in the entertainment industry.

(2) Employers must provide the following:

(a) A safe and secure place for minors to rest and play; and

(b) Suitable nursery and rest facilities.

(3) Minors under six months of age may not be exposed to lights of greater than 100 foot candle-light intensity for more than thirty seconds at a time.

(4) Employers shall provide worker's compensation insurance coverage for all minors in accordance with the laws of the State of Oregon.

(5) Transportation to the closest medical facility providing emergency services must be available at all times while minors are present.

(6) On location, the employer shall provide return transportation for the minor promptly upon dismissal.

(7) Employers shall comply with all statutes and rules of the Commission concerning the employment of minors.

(8) No employer shall expose a minor to undue emotional stress while employing a minor in the entertainment industry.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.305 & 653.320(4)

Hist.: BL 9-1984, f. & ef. 8-7-84

## **Prohibited Performances**

### **839-021-0355**

#### **Prohibited Performances**

(1) No employer shall employ a minor in the entertainment industry in any occupation declared particularly hazardous pursuant to OAR 839-021-0102 and 839-021-0104 or in employment prohibited by OAR 839-021-0097 and 839-021-0276 to 839-021-0285. However, a safe simulation of such employment may be allowed.

(2) Minors under the age of fifteen days of age shall not be employed in the entertainment industry.

(3) Minors under one year of age shall not be employed in the entertainment industry unless the employer can demonstrate a need for such minor. A separate letter of application must be submitted to the Executive Secretary or designee setting forth the details of the needed employment. The letter must include a complete description of the action in which the minor is expected to participate, certification that the minor will not be engaged for longer than the hours allowed by OAR 839-021-0335, a signed statement from the minor's parent permitting the employment and a signed statement from a physician licensed by the Oregon State Board of Health attesting that the minor is physically able to perform the expected duties. The physician's statement must be accompanied by the physician's complete address and his/her agreement to furnish the Bureau of Labor and Industries with any or all of the information necessary to confirm the particulars of such statement.

(4) No employer shall employ a minor under one year of age in the entertainment industry unless a registered nurse is present and available to the minor at all times while the minor is present.

- (5) No employer shall employ a minor in the entertainment industry when the employment would place the minor in a clear and present danger to life and limb. If the minor believes him/herself to be in such danger, the employer shall, at the same time, discuss the matter with the minor and the minor's parent or guardian together. If the minor persists in his/her belief, regardless of its validity, the employer shall not require the minor to perform the activity the minor believes will place him/her in such danger.
- (6) No employer shall employ a minor to participate in a performance in the entertainment industry unless the minor has been trained to portray it safely.
- (7) No employer shall employ a minor to participate in, or be present during, an obscene performance or the depiction of an obscene performance in violation of ORS 163.477 to 163.495 or ORS 167.060 to 167.095.
- (8) No employer shall employ a minor in a place of public amusement or entertainment in violation of ORS 167.830 to 167.840.
- (9) No employer shall employ a minor to be exhibited in a trance in violation of ORS 167.870.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 163.477 - 163.495, 167.060 - 167.095, 167.830 - 167.840, 167.870, 653.305 & 653.320

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0360**

**Special Permit, Hours Variance or Employment Certificate May be Refused**

When it appears to the executive secretary or designee that the proposed employment would be prohibited by OAR 839-021-0355, the executive secretary or designee may refuse to issue any special permit, hours variance or employment certificate.

Stat. Auth.: ORS 653.305 & 653.525

Stats. Implemented: ORS 653.305 & 653.307

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 3-1995, f. 9-8-95, cert. ef. 9-9-95

**Record Keeping Requirements/Posting**

**839-021-0365**

**Required Records**

- (1) Employers, including registered employers, employing minors in long-term employment and unregistered employers employing minors in short term employment shall maintain the following records for a period of two years from the date of initial employment:
  - (a) Name, address and telephone number of all minors employed;
  - (b) Total hours worked each day and each week;

- (c) Daily starting and quitting time;
- (d) Age of each minor;
- (e) Date authorized to employ such minors by the Bureau;
- (f) Rate of wage and total wages paid each week;
- (g) Any deductions, rebates or refunds taken from an employee's total wages and the net amount of wages paid;
- (h) Any payroll or other such records pertaining to the employment of minors.

(2) Registered employers employing minors in a single engagement in short term employment shall comply with section (1) of this rule. When, in a single engagement, the number of minors employed is more than five, the registered employer shall maintain the following records for a period of two years from the date employment began on the particular engagement:

- (a) Total number of minors employed on the engagement;
- (b) Dates the minors were employed;
- (c) Approximate ages of the minors;
- (d) Date notification made to the Work Permit Section pursuant to OAR 839-021-0320(4).

Stat. Auth.: ORS Ch. 653  
Stats. Implemented: ORS 653.545  
Hist.: BL 9-1984, f. & ef. 8-7-84

**839-021-0370**

**Records Availability**

All employers shall make available to representatives of the Wage and Hour Division of the Bureau, records necessary to determine whether the employer is complying with OAR 839-021-0300 to 839-021-0375. Such records include, but are not limited to, the records described in OAR 839-021-0365. Such records shall be made available to such representatives for inspection and transcription during normal business hours.

Stat. Auth.: ORS Ch. 653  
Stats. Implemented: ORS 653.305 to 653.310 & 653.545  
Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88

**839-021-0375**

**Posting**

In addition to other postings required by law, registered employers shall post the Registration Certificate in a conspicuous place at their place of business.



Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.315(4) & 653.320(4)

Hist.: BL 9-1984, f. & ef. 8-7-84

**Penalties**

**839-021-0490**

**Penalties**

- (1) In addition to any civil penalties which may be assessed by the Commissioner pursuant to ORS 653.370, the Commission may, at their discretion, revoke the right of an employer to hire minors in the future if it is determined by the Commission that the employer has failed to comply with the provisions of ORS 653.305 to 653.340 or with OAR 839-021-0210 to 839-021-0248.
- (2) Prior to the revocation of the right to employ minors in the future an employer may request a contested case hearing pursuant to the Administrative Rules of the Commission for contested case hearings.
- (3) If requested, the contested case hearing will be held in accordance with OAR 839-022-0000 to 839-022-0060.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.520, 653.535 & 653.545(2)

Hist.: BL 9-1984, f. & ef. 8-7-84; BL 6-1988, f. & cert. ef. 4-12-88, Renumbered from 839-021-0380

**Exemptions**

**839-021-0500**

**Exemptions**

- The provisions of OAR 839-021-0001 to 839-021-0500 do not apply to employers employing minors in the following work or occupations:
- (1) Domestic work or chores in or about a private residence.
- (2) Newspaper carrier.
- (3) Newspaper vendor.

Stat. Auth.: ORS Ch. 653

Stats. Implemented: ORS 653.315 & 653.355

Hist.: BL 6-1988, f. & cert. ef. 4-12-88

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 22**

**ADMINISTRATIVE RULES OF PROCEDURE**

**839-022-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment, or repeal of any rule, the Wage and Hour Commission shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the Wage and Hour Commission's mailing list established pursuant to ORS 183.335(6).
- (3) By mailing a copy of the notice to the following persons, organizations, or publications:
  - (a) United Press International and Associated Press;
  - (b) Oregon Labor Press;
  - (c) Associated Oregon Industries;
  - (d) Associated General Contractors;
  - (e) AFL-CIO;
  - (f) Appropriate Labor Unions.

Stat. Auth.: ORS Ch. 183  
Stats. Implemented: ORS 653.525  
Hist.: BL 180, f. & ef. 10-24-75

**839-022-0005**

**Rules of Procedure for Public Meetings of the Wage and Hour Commission**

Public Proceedings, other than contested case, of the Wage and Hour Commission shall be conducted as follows:

- (1) To the extent that they do not conflict with any other rules of the Commission, Robert's Rules of Order Revised, 75th Anniversary edition, shall constitute the rules of procedure of all meetings and hearings of the Commission.
- (2) All members of the Wage and Hour Commission, including the chairman, shall have the right and duty to vote affirmatively or negatively on all issues before the Commission on which a vote is taken.
- (3) All motions before the Commission shall be discussed and put to a vote, without the necessity of a second, if not withdrawn or superseded.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.530

Hist.: BL 48, f. 12-29-60; BL 145, f. 9-5-73; BL 13-1986, f. & ef. 11-26-86

**839-022-0010**

**Model Rules of Practice and Procedure**

The Attorney General's Model Rules of Procedure under the Administrative Procedures Act, effective March 3, 1988, are hereby adopted by reference, except that the Model Rules of Procedure shall not apply to contested cases conducted for violations of ORS 653.305 to 653.545 or OAR 839-021-0005 to 839-021-0380. The rules for contested case proceedings are set forth in OAR 839-022-0020 to 839-022-0060. Any matters not addressed in OAR 839-022-0020 to 839-022-0060 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.530

Hist.: BL 119(Temp), f. & ef. 2-14-72; BL 124, f. 4-27-72, ef. 5-15-72; BL 166, f. 9-3-74, ef. 9-25-74; BL 196, f. & ef. 2-6-77; BL 7-1978, f. & ef. 8-7-78; BL 4-1982, f. & ef. 3-5-82; BL 13-1986, f. & ef. 11-26-86; BL 6-1988, f. & cert. ef. 4-12-88

**839-022-0020**

**Definitions**

- (1) "Wage and Hour Commission" means those individuals appointed by the Governor pursuant to ORS 653.505 to administer, execute and carry out the provisions of ORS 653.305 to 653.545. The mailing address for the above is as follows: Wage and Hour Commission, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, OR 97201.
- (2) "Charging Document" means any document issued by the Wage and Hour Commission stating that any person, entity, or government agency has violated the laws as set forth in ORS 653.305 to 653.545 or OAR 839-021-0005 through 839-021-0380, over which the Commission has jurisdiction to enforce.
- (3) "Charged Party" means any person, entity, or government agency who has been served with a Charging Document.

(4) "Agency" means, for purposes of these rules for hearings, any employe of the Bureau of Labor and Industries, but does not include the Commissioner or the Wage and Hour Commission.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.307 & 653.535

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0025**

**Authority of the Wage and Hour Commission**

In cases where the Wage and Hour Commission has issued a Charging Document, the Wage and Hour Commission retains all authority to:

- (1) Regulate the course of the hearing including scheduling, recessing, reconvening and adjourning;
- (2) Make evidentiary rulings, with or without objection;
- (3) Question witnesses at the hearing;
- (4) Issue subpoenas and order the taking of depositions in a manner consistent with rules relating to these powers;
- (5) Allow discovery to the extent necessary and to limit, supervise and control discovery;
- (6) Hold appropriate conferences, if necessary, before or during the course of the hearing;
- (7) Decide matters, including motions for summary judgment or other motions which involve a final determination of the proceeding, and issue a Final Order;
- (8) Limit or extend filing periods and grant waivers;
- (9) Designate a Hearings Referee to preside over any case before the Commission subject to the limitations in OAR 839-022-0030(2);
- (10) Relieve a party from a Final Order by reason of default where the Order was entered against the party as a result of excusable mistake or circumstances beyond the control of the party or the Wage and Hour Commission or the Agency;
- (11) Take any other action consistent with the duties of a Hearings Referee, as set fourth beginning at OAR 839-030-0020, including requesting legal advice from the Attorney General, or policy statements from the Agency.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.307

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0030**

**Procedure for Contested Cases**

- (1) Where a contested case hearing has been requested, parties shall be bound by the rules governing contested case

hearings beginning at OAR 839-030-0020, including those rules pertaining to time limitations, motions, discovery, subpoenas, filings and other procedural rules.

- (2)(a) Where a contested case hearing has been requested, the Wage and Hour Commission may delegate the authority to handle all procedural matters involved in a contested case hearing to a Hearings Referee. In such cases, the Hearings Referee shall follow the rules set forth beginning at 839-030-0020 for the conduct of contested case hearings.
- (b) The Hearings Referee does not have the authority to make factual findings or to render a final decision in any matter pending before the Wage and Hour Commission. The Hearings Referee may issue subpoenas and rule on motions regarding postponements, evidence or procedural matters.
- (c) The Hearings Referee may, at the request of the Wage and Hour Commission, prepare a draft version of a Final Order for the Wage and Hour Commission. This draft shall not be circulated to the parties.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.307 & 653.535

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0035**

**Final Orders**

In all cases before the Wage and Hour Commission, a Final Order shall be prepared to be issued to the Agency and to the parties involved in the case. The Final Order shall set forth Findings of Fact, Conclusions of Law, and where appropriate, an Order.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.307 & 653.535

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0040**

**Decisions of the Wage and Hour Commission**

- (1) Decisions on any motion or issue that is not dispositive of the case pending before the Wage and Hour Commission may be made by the Chairperson or any member acting in that capacity.
- (2) Any decision that is dispositive of a case must be made by a majority of the Commissioners in accordance with ORS 653.510(2).

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.520

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0045**

**Default**

- (1) When the charged party fails to appear at the specified time and place for the contested case hearing, the Wage and Hour Commission shall take evidence to establish a prima facie case in support of the Charging Document. The Wage and Hour Commission shall wait no longer than 30 minutes after the scheduled time to commence the hearing.
- (2) A Final Order supporting the Charging Document shall be rendered only where the contested case record demonstrates a prima facie case supporting that Document.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.307 & 653.535

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0050**

**Relief From Default**

- (1) The Wage and Hour Commission may, in its discretion and upon such terms as may be just, at anytime within 30 days after the issuance of a Final Order, relieve a party from the terms of the Final Order taken against the party where the party establishes that the default was the result of an excusable mistake or circumstance beyond the control of the Agency or party or the Wage and Hour Commission.
- (2) The Request for Relief shall be in writing directed to the Wage and Hour Commission and shall contain: a written statement, together with appropriate documentation, setting forth the facts supporting the alleged excusable mistake or circumstances beyond the control of the party or the Agency or the Wage and Hour Commission.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.307 & 653.535

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0055**

**Dual Hearings**

- (1) The Wage and Hour Commission may hold one contested case hearing in conjunction with a contested case hearing held by the Commissioner to resolve the allegations in two or more Charging Documents where: The same evidence must be presented in both cases:
- (a) The issues in both cases need not be the same nor must the same remedies, damages or penalties be sought.
  - (b) The procedure will not result in prejudice to any party; and
  - (c) The Agency and the parties agree by written stipulation to the procedure.
- (2) Such hearings may be combined even where the Wage and Hour Commission and the Commissioner are each separately responsible for entry of a Final Order.
- (3) The same Hearings Referee may be designated by the Wage and Hour Commission to control the procedure of the hearing as was designated by the Commissioner to preside over the hearing. The Hearings Referee shall not make

Findings of Fact for the Wage and Hour Commission, but may, upon their request, submit to the Wage and Hour Commission a draft version of a Final Order. This draft version shall not be circulated to the parties.

(4) All other rules governing the issuance of Charging Documents or the conduct or procedure of hearings apply to dual hearings.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.305 - 653.545

Hist.: BL 13-1986, f. & ef. 11-26-86

**839-022-0060**

**Consolidation of Hearings**

The Wage and Hour Commission may combine hearings under the same circumstances as may the Commissioner under OAR 839-030-0095.

Stat. Auth.: ORS Ch. 183 & 653

Stats. Implemented: ORS 653.305 - 653.545

Hist.: BL 13-1986, f. & ef. 11-26-86

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**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 30**

**PROCEDURAL RULES**

**839-030-0000**

**Notice of Proposed Rule**

Prior to the adoption, amendment or repeal of any rule for the Support Services Division of the Bureau of Labor and Industries, the Support Services Division shall give notice of intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the rule's effective date.
- (2) By mailing a copy of the notice of intended action to persons on the Support Services Division mailing list established pursuant to ORS 183.335 (7).
- (3) By mailing or furnishing a copy of the notice of intended action to:
  - (a) The Oregonian;
  - (b) United Press International;
  - (c) Associated Press;
  - (d) Willamette Week;
  - (e) League of Oregon Cities;
  - (f) Associated Oregon Counties;
  - (g) Oregon State Bar;
  - (h) Oregon Legal Services.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS Ch. 651

Hist.: BL 4-1986, f. & ef. 6-16-86

**839-030-0005**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective November 4, 1991, are hereby adopted by reference as permanent rules for the Bureau of Labor and Industries except to the extent modified in this division or any other division of OAR Chapter 839.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183, 651.060(4) & Ch. 659

Stats. Implemented: ORS Ch. 651

Hist.: BL 4-1986, f. & ef. 6-16-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93

**839-030-0010**

**Public Records Request**

- (1) The Bureau of Labor and Industries shall make available any record requested by any person pursuant to ORS 192.420, provided that the request is in writing and the record requested is not exempt from disclosure under the provisions of ORS Chapter 192, other applicable law, or required to be kept confidential by contract. A reasonable period of time shall be allowed for the Bureau to locate and retrieve information requested.
- (2) The Bureau of Labor and Industries shall charge, unless otherwise specified in OAR Chapter 839, the person requesting the records 15¢ per page payable upon receipt of the copy(ies) as reimbursement for the actual costs of searching, reviewing, gleaning, and photocopying the record(s) requested, plus any applicable delivery costs or postage. The Bureau shall charge for copies sent by facsimile (fax) machine \$5 for the first page and \$2 for each page thereafter.
- (3) Where the request is to inspect records, the Bureau may impose restrictions upon the location where the information requested will be made available for inspection. Where the Bureau allows the person requesting the information to search or inspect Bureau records, the Bureau may assign, as it deems necessary for the protection of the records, an employee to supervise the search. The charge for this service will be in accordance with sections (4) and (5) of this rule.
- (4) Where a request for records requires substantial employee time to comply, the Bureau may charge the person requesting the records the actual costs incurred by the Bureau, including:
  - (a) The time spent by employees in locating, reviewing, gleaning, compiling, photocopying the records, supervising a record search, and where applicable, preparing the records for delivery or mailing; and
  - (b) The costs of any necessary review by the Attorney General.
- (5) Staff time required to comply with a request for public records shall be billed at a rate not to exceed \$15 per hour for time spent by a clerical employee and not to exceed \$20 per hour for time spent by a supervisory employee. Where applicable, the fee will be prorated for fractions of hours spent.
- (6) The Bureau may require that all fees assessed pursuant to this rule be paid in cash prior to furnishing any copies, material, or information requested.
- (7) The commissioner may waive the require-ments to pay the charges described in this rule, or any part thereof, where

the commissioner determines that assessment of those charges would cause an undue hardship to the individual requesting the public records and where waiver of the requirement would serve to promote compliance with the laws enforced by the Bureau.

Stat. Auth.: ORS Ch. 183, 192 & 651.060(4)

Stats. Implemented: ORS Ch. 651

Hist.: BL 4-1986, f. & ef. 6-16-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93

**Selecting Consultants to Perform Personal Services for the Bureau of Labor and Industries, Executing and Administering Those Contracts**

**839-030-0300**

**Introduction**

The Bureau of Labor and Industries may contract with consultants to provide required services. It is the intent of the Bureau to publicly announce all requirements for consultant services, and to select consultants on the basis of demonstrated competence and qualification for the type of professional services required. All such contracts will be executed at a fair and reasonable price

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS Ch. 651

Hist.: BL 11-1992, f. & cert. ef. 7-29-92

**839-030-0310**

**Definitions**

- (1) "Commissioner" -- Commissioner, Bureau of Labor and Industries, or authorized representative.
- (2) "Bureau" -- Bureau of Labor and Industries.
- (3) "Firms" -- An individual or firm technically and financially qualified to perform certain types of work classified as personal services.
- (4) "Fiscal Officer" -- The Chief Financial Officer of the Bureau of Labor and Industries.
- (5) "Division Administrator" -- An Administrator of a Bureau Division.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS Ch. 651

Hist.: BL 11-1992, f. & cert. ef. 7-29-92

**839-030-0320**

**Policy**

The Bureau will contract for consultant services only when the service cannot be performed within a reasonable time with the Bureau's own work force, or when it will be less expensive to contract for the work, or when the required skills are not available within the Bureau, or when an impartial opinion is required. Such contracts require the approval of the Commissioner. The selection of the most qualified consultant will be based on, but not limited to, the consultant's demonstrated capabilities, experience, and project approach. A contract will be awarded at a fair and reasonable cost, as approved by the Commissioner. Throughout the consultant selection process, every effort will be made to encourage disadvantaged and emerging small businesses to submit proposals.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS Ch. 651

Hist.: BL 11-1992, f. & cert. ef. 7-29-92

**839-030-0330**

**Informal Process (\$2,500 and Under)**

- (1) When the amount of the contract will be equal to or less than \$2,500, the Commissioner may use an informal selection process. Under this process the Fiscal Officer or Division Administrator may solicit proposals in writing or by telephone, from a minimum of three prospective consultants, and immediately recommend to the Commissioner the most qualified consultant.
- (2) The Commissioner may make immediate and direct consultant appointments whenever conditions require prompt action to protect loss of life or property.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS Ch. 651

Hist.: BL 11-1992, f. & cert. ef. 7-29-92

**839-030-0340**

**Formal Process (Over \$2,500)**

- (1) The Bureau shall make a public announcement to obtain a list of consultants interested in providing professional services to the Bureau. The Bureau will request statements of qualifications or proposals, or both, for either single projects or groups of projects. The announcement will be made in either trade periodicals and/or newspapers of general circulations, and may include the following:
  - (a) Descriptions of project type(s);
  - (b) Typical project(s) scope;
  - (c) Anticipated project start and completion dates;
  - (d) Any special requirements;
  - (e) Closing date by which statement of interest and qualifications must be received; and

(f) Evaluation criteria and selection procedure.

(2) Initial Screening:

(a) The Fiscal Officer or Division Administrator shall, for each proposed project, evaluate statements of qualifications and performance data. The Fiscal Officer shall evaluate each firm for its:

(A) Approach to the project;

(B) Capability;

(C) Credentials;

(D) Experience; and

(E) Performance data.

(b) Based on the evaluation criteria published in the request for qualification announcement, the Fiscal Officer shall select, in order of preference, a list of at least three firms (short list) deemed to be most highly qualified to provide the required services.

(c) The Fiscal Officer or Division Administrator will interview the short listed firms and make a hiring recommendation to the Commissioner. When a proposal is requested, the Fiscal Officer or Division Administrator may elect to eliminate the interview step and recommend the most qualified firm to the Commissioner.

(3) Final Selection:

(a) The Commissioner shall select the most qualified firm and negotiate a contract with that firm at compensation which is fair and reasonable for the Bureau. In making the final selection, the Commissioner shall consider the estimated value of the services to be rendered, the project scope, and complexity.

(A) Should the Bureau be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be terminated in writing. The Bureau will then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, The Bureau will terminate negotiations in writing. The Bureau will then undertake negotiations with the third most qualified firm;

(B) Should the Bureau be unable to negotiate a satisfactory contract with any of the selected firms, it shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this section until an agreement is reached or a decision not to contract for professional services is made.

(b) When the Commissioner determines that only one firm exists within the service area that is capable of performing the required services, the Commissioner may negotiate a sole source contract with that firm. A sole source designation eliminates the necessity for a selection process.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS Ch. 651

Hist.: BL 11-1992, f. & cert. ef. 7-29-92

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 33**

**EXPEDITED CONTESTED CASE HEARING RULES FOR CERTAIN LICENSING MATTERS**

**839-033-0000**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective October 15, 1989, are hereby adopted by reference as permanent rules for the Office of Administrative Services of the Bureau of Labor and Industries except to the extent modified in this division or any other division of Chapter 839 of the Oregon Administrative Rules. The rules for expedited contested case proceedings are set forth in OAR 839-033-0000 to 839-033-0095. Any matters not addressed in OAR 839-033-0000 to 839-033-0095 will be governed by the Model Rules of Procedure.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Bureau of Labor and Industries.]

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0005**

**Statement of Purpose**

- (1) The purpose of OAR 839-033-0000 to 839-033-0095 is to give all persons involved in an expedited contested case hearing before the Bureau of Labor and Industries clear guidelines to follow and an understanding of what is expected of participants.
- (2) The major focus of these rules is to define the participants, provide a procedure to allow all participants to raise claims and defenses, assure that the facts and issues are properly presented and addressed, and provide for thorough and expeditious hearings.
- (3) In an effort to provide expedited hearings, OAR 839-033-0000 to 839-033-0095 establish time limitations which will be strictly followed. Waiver or extension of the set time limitations will be granted only under the limited circumstances as set forth in these rules.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

## **839-033-0010**

### **Definitions**

The following definitions apply, unless the context requires otherwise, to OAR 839-033-0000 through 839-033-0095:

- (1) "Agency" means the Bureau of Labor and Industries and any employee thereof, but for purposes of these rules, does not refer to the Administrative Law Judge or the Commissioner.
- (2) "Case Presenter" means the Agency staff person assigned to present the case for the Agency at the contested case hearing and to handle all related matters.
- (3) "Charging Document" means any document issued by the Bureau of Labor and Industries stating that any person or entity has violated the laws over which this Agency has jurisdiction and includes:
  - (a) Notice of Intent to Assess Civil Penalties;
  - (b) Notice of Intent to Refuse to Renew License;
  - (c) Notice of Intent to Revoke License;
  - (d) Notice of Intent to Suspend License;
  - (e) Notice of Intent to Suspend or Revoke License or to Assess Civil Penalty in Lieu Thereof.
- (4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.
- (5) "Counsel" means an attorney who is a member in good standing of the Oregon State Bar.
- (6) "Counsel for the Agency" means, where the Agency requires the assistance of an attorney, pursuant to ORS Chapter 180, the Attorney General.
- (7) "Good Cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. Good cause does not include a lack of knowledge of the law including these rules. The Administrative Law Judge will determine what constitutes good cause.
- (8) "Administrative Law Judge" means the Commissioner or an individual or a special tribunal designated by the Commissioner to preside over all aspects of a contested case hearing including motions, oral or written hearings, and preparation of the Final Order. The Administrative Law Judge may or may not be an employee of the Agency.
- (9) "Hearings Unit" means the section of the Office of Administrative Services that handles all aspects of administrative hearings. The address for the unit is: 1005 State Office Building, 800 NE Oregon Street #32, Portland, Oregon, 97232.
- (10) "Issuance" means the act of sending out a document from the Hearings Unit. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the Hearings Unit.
- (11) "Party" means any person or entity upon whom a Charging Document has been served.



- (12) "Service" means, for purposes of these rules, the method of forwarding documents and includes personal service, registered mail, certified mail, hand delivery or regular U.S. Mail.
- (13) "Participant" means any party or the Agency involved in a particular contested case proceeding.
- (14) "Substantial Prejudice" means harm to a participant's rights which would affect the outcome of the case.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0015**

**Charging Documents**

A Charging Document must contain:

- (1) A statement of the party's right to a contest case hearing;
- (2) A statement of the authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the statutes and rules involved; and
- (4) A short and plain statement of the matters asserted or charged.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0020**

**Service of Documents**

- (1) The Charging Document shall be served on the party or the party's representative by personal service or by registered or certified mail. All other documents may be served by regular U.S. Mail to the last known address in the Agency file for the case to be heard.
- (2) Any participant filing any other document with the Hearings Unit shall serve a copy of such document upon all other participants or their representatives.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0025**

**Calculation of Time and Filing Dates**

- (1) The computation of any period of time will not include the day from which the designated period begins to run. The computation will include the last day of this period unless it is a Saturday, Sunday or holiday officially recognized by the State of Oregon or the federal government. If the last day of the time period is a Saturday, Sunday, or holiday, the period shall run until 5:00 p.m. of the next day which is not a Saturday, Sunday or holiday.
- (2) Except as modified by statute or enlarged by these rules, or by decision of the Administrative Law Judge:
- (a) A document is filed either on the date received by the Hearings Unit, or on the date postmarked on the properly addressed document, whichever is earliest;
- (b) All time periods are measured in calendar days.
- (3) Any document, whether submitted by the Agency or a party, that is filed with the Hearings Unit beyond the established number of days for submittal may be disregarded by the Administrative Law Judge.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0030**

**Location of Contested Case Hearings**

Contested case hearings will generally be held in a Bureau of Labor and Industries office. Participants shall be advised of the location for the hearing in the Notice of Hearing.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0035**

**Notice of Hearing**

- (1) A Notice of Hearing shall accompany the Charging Document. The Notice of Hearing shall contain:
- (a) A statement of the time and place of the hearing, including a statement that the hearing will reconvene on successive business days thereafter until concluded;
- (b) A statement of the authority and jurisdiction under which the hearing is to be held;
- (c) A reference to the particular sections of the statutes and rules involved;
- (d) A short and plain statement of the matters asserted or charged;
- (e) The name of the Administrative Law Judge designated by the Commissioner to preside at the hearing, and whether the referee is an employee of the Agency;

- (f) A statement indicating whether or not the case for the Agency will be presented by the Attorney General.
- (2) Except as provided in section (3) of this rule, a hearing will be set no sooner than 20 days after the date of issuance of the Charging Document.
- (3) A hearing may be set sooner than 20 days after the date of issuance of the Charging Document when the Agency and all parties agree and the Administrative Law Judge assigned to the case is available. When a case is expedited under this section of this rule, the Administrative Law Judge may adjust as necessary the time limitations established in these rules, and shall notify the participants of such adjustments.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0040**

**Representation of a Party by Counsel**

- (1) Any party may be represented by counsel. All corporations and unincorporated associations must be represented by counsel in accordance with ORS 9.160 and 9.320. In such cases, counsel may perform all functions consistent with representation of a client.
- (2) Once the contested case hearing has begun, no party will be allowed a recess to obtain the services of counsel.
- (3) In addition to counsel, a party may have present at hearing one individual natural person designated to assist in the party's case.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0045**

**Case Presenter**

- (1) The Case Presenter is authorized by ORS Chapter 183 to appear on behalf of and represent the Agency. The Case Presenter can perform any function not prohibited by this rule.
- (2) The Case Presenter may not make legal argument:
  - (a) Legal argument includes arguments on:
    - (A) The jurisdiction of the Agency to hear the contested case;
    - (B) The constitutionality of a statute or rule or the application of a constitutional requirement to the Agency; and
    - (C) The application of court precedent to the facts of the particular contested case proceeding.
  - (b) Legal Argument does not include opening and closing statements, presentation of evidence, examination and cross-

examination of witnesses, or presentation of factual arguments or arguments on:

- (A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;
- (B) Comparison of prior actions of the Agency;
- (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and
- (D) The admissibility of evidence or the correctness of procedures being followed.

(3) When a Case Presenter is representing the Agency in a hearing, the Administrative Law Judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the Administrative Law Judge shall provide reasonable opportunity for the Case Presenter to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0050**

**Motions**

Motions which may be made in any contested case proceeding include but are not limited to the following:

- (1) Motion to Dismiss: This motion must be made within ten days of the issuance of the Charging Document and shall be based upon:
  - (a) Lack of jurisdiction over the subject matter or person; or
  - (b) Insufficiency of process or service of process.
- (2) Motion to Change the Place of Hearing: This motion must be made within ten days of the issuance of the Charging Document.
- (3) Motion to Exclude Witnesses:
  - (a) For purposes of exclusion, the parties or Agency staff presenting a case are not considered witnesses. The motion may be made by any participant at any time prior to the hearing or during the hearing. The Administrative Law Judge may, without a motion, exclude witnesses;
  - (b) An individual natural person who is a party under these rules, or who is a party's designated representative under OAR 839-033-0040(3) is not subject to exclusion under this rule.
- (4) Motion for Summary Judgment:
  - (a) A motion may be made by a participant, or the Administrative Law Judge may independently allow, for an accelerated decision in favor of the Agency or any party as to all or part of the issues raised in the Charging Document. The motion may be based on any of the following conditions:

- (A) Direct or collateral estoppel;
  - (B) No issue of genuine fact exists and a participant is entitled to judgment as a matter of law, as to all or any part of the proceedings; or
  - (C) Such other reasons as are just.
- (b) Such motion may be made any time prior to the scheduled date of hearing;
- (c) In cases where the Administrative Law Judge grants the motion, the decision shall be set forth in the Final Order.
- (5) Motion for a Postponement:
- (a) Any participant making a request for a postponement must state in detail the reason for the request. The Administrative Law Judge may grant the request for good cause shown;
  - (b) In cases where all participants agree to a postponement, in the order for the postponement to be effective, the Administrative Law Judge must approve of this agreement.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0055**

**Subpoenas**

- (1) Subpoenas may be issued as provided for in ORS 183.440.
- (2) Where the Agency or any party fails to comply with a subpoena within the time specified for production and has not objected to the subpoena within the time specified for production, the Administrative Law Judge may:
- (a) Draw an adverse inference that the documents or testimony sought are unfavorable to the Agency or party subpoenaed; or
  - (b) Exclude the documents or testimony sought, if offered at hearing by the participant subpoenaed, when substantial prejudice is shown by the participant issuing the subpoena.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0060**

**Settlement**

- (1) Where a party is interested in reaching a settlement of the case prior to the contested case hearing, the party should contact the individual listed in the Notice of Hearing who is scheduled to present the case for the Agency. Settlement negotiations do not serve as a basis for a postponement and participants should continue to prepare for hearing until a

settlement is reached and the Hearings Unit is so notified.

- (2) Where a settlement is reached before the date of hearing, the Agency shall immediately notify the Hearings Unit. On the date of the hearing, the terms of the settlement shall be placed on the record unless fully executed settlement documents are submitted on or before the date set for hearing.
- (3) Where settlement terms are placed on the record, fully executed settlement documents must be submitted to the Hearings Unit within ten days after the date set for hearing. Where a party fails to submit the settlement documentation within ten days after the date set for hearing, the terms of the settlement set forth on the record shall constitute the basis for a Final Order.
- (4) Relief from the time limitations set forth in this rule can be granted only for good cause shown.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0065**

**Interpreters**

- (1) When a person who cannot speak or understand the English language, or who has a physical hearing impairment or physical speaking impairment, is involved in a contested case hearing, such person is entitled to a qualified interpreter. All interpreters shall be appointed by the Administrative Law Judge. In order to obtain the services of an interpreter, a participant must notify the Administrative Law Judge no later than ten days prior to the date the interpreter will be needed.
- (2) Upon receipt of such request, the Hearings Unit will arrange for the services of an interpreter and shall notify the participants of the identity of the interpreter. The Agency shall compensate the interpreter where necessary.
- (3) Agency staff may serve as interpreter where the party or parties consent and so state on the record.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0070**

**Responsibilities of the Administrative Law Judge**

- Upon designation of a Administrative Law Judge, the Commissioner delegates to the Administrative Law Judge the authority to:
- (1) Rule on all motions and evidence;
  - (2) Issue subpoenas in a manner consistent with ORS Chapter 183;
  - (3) Hold appropriate conferences, if necessary, before or during the hearing to discuss the conduct of the proceedings or the issues to be presented;

- (4) Regulate the course of the hearing including scheduling, reconvening and adjourning;
- (5) Maintain order during the course of the hearing, including the authority to expel persons whose conduct is disruptive;
- (6) Question witnesses at the hearing and set time limitations for argument or presentation;
- (7) Limit or extend filing periods;
- (8) Decide procedural matters;
- (9) Take official notice of judicially recognizable facts and of general, technical or scientific facts;
- (10) Prepare and issue a Final Order at the conclusion of the contested case hearing and send it to the Agency, the Commissioner, and all parties to the case;
- (11) Take any other action consistent with the duties of Administrative Law Judge.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

## **839-033-0075**

### **Conduct of Hearings**

The hearing shall be conducted by and shall be under the control of the Administrative Law Judge designated by the Commissioner. At the discretion of the Administrative Law Judge, the hearing may be conducted in the following manner:

- (1) The Administrative Law Judge shall open the hearing with a brief introduction of the Agency, the parties and issues, including all information required by ORS 183.413(2) and 183.415(7).
- (2) Each party and the Agency shall be given an opportunity to present a summary of the evidence and issues to be presented at the hearing.
- (3) The Agency, through staff or counsel, shall present evidence in support of the Charging Document.
- (4) Parties opposing the Charging Document shall present evidence in support of their respective positions.
- (5) Participants shall have the right to conduct cross-examination of adverse witnesses.
- (6) Participants may present rebuttal evidence.
- (7) Participants shall be given the opportunity to make a closing statement at the conclusion of the testimony.
- (8) The Administrative Law Judge shall have the right to question any witness. The Administrative Law Judge may request the Agency or any party to provide additional evidence, and may postpone the hearing where necessary, to allow the Agency or party the opportunity to gather and present the requested evidence.
- (9) The Administrative Law Judge may call the parties together before the hearing for a conference in order to ascertain what is disputed, hear argument upon motions, or resolve procedural matters. At any time during the hearing, the

Administrative Law Judge may recess the hearing in order to conduct such conference. The results of any conference shall be summarized on the record, except that argument upon motions shall be recorded verbatim.

- (10) Where the testimony of a witness who cannot be present at the hearing is necessary to the complete and fair adjudication of the case, the Administrative Law Judge may admit testimony of the witness by telephone:
- (a) In such cases, the testimony of the witness must be broadcasted simultaneously to all participants and the Administrative Law Judge;
- (b) The Agency or party presenting a witness by telephone shall advise the Hearings Unit at least five days prior to the hearing and provide the approximate time that the witness will be available.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0080**

**Evidence**

- (1) All evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs will be admissible.
- (2) Irrelevant, immaterial or unduly repetitious evidence may be excluded.
- (3) The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition. The burden of making a prima facie case rests with the Agency.
- (4) Any witness, including Agency staff, may submit evidence to the Administrative Law Judge.
- (5) All offered evidence to which there is no objection may be received by the Administrative Law Judge subject to the Administrative Law Judge's power to exclude irrelevant, immaterial or unduly repetitious matter.
- (6) Evidence on which an objection is made may be taken by the Administrative Law Judge. Rulings on the admissibility or exclusion of this evidence will be made at the hearing or at the time the Final Order is issued.
- (7) An affidavit or certificate may be offered and received with the same effect as oral testimony, provided the Administrative Law Judge determines that:
- (a) The contents of the document are of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and
- (b) A participant requesting cross-examination of the document preparer would not suffer substantial prejudice by the lack of cross-examination.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91



**839-033-0085**

**Default**

- (1) Default occurs when a party fails to appear at the scheduled hearing.
- (2) When a party fails to appear at the specified time and place for the contested case hearing, the Administrative Law Judge shall take evidence to establish a prima facie case in support of the Charging Document and shall then issue a Final Order. Unless notified by the party, the Administrative Law Judge shall wait no longer than 30 minutes from the time set for the hearing in the Notice of Hearing to commence the hearing.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0090**

**Relief from Default**

- (1) Relief from default may be granted where good cause is established within ten days of the date a party failed to appear at hearing.
- (2) The request for relief from default shall be in writing directed to the Administrative Law Judge through the Hearings Unit and shall be accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting the claim of good cause.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

**839-033-0095**

**Final Order**

- (1) On the basis of the record considered as a whole, the Administrative Law Judge shall issue a Final Order in writing which includes Findings of Fact, Ultimate Findings of Fact, Conclusions of Law, Opinion and Order. The Final Order shall also contain a notice that the Final Order may be appealed to the Oregon Court of Appeals.
- (2) Parties to a contested case, or their representatives, shall be served a copy of the Final Order by regular U.S. Mail or any other means reasonably calculated to serve the parties.

Stat. Auth.: ORS 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 4-1991, f. 5-8-91, cert. ef. 5-15-91

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**Oregon Administrative Rules  
1998 Compilation**

**BUREAU OF LABOR AND INDUSTRIES**

**DIVISION 50**

**CONTESTED CASE HEARING RULES**

**839-050-0000**

**Statement of Purpose**

- (1) The purpose of OAR 839-050-0000 to 839-050-0440 is to carry out the statutory policies contained in ORS 183.413 to 183.470, to give all persons involved in a contested case clear guidelines to follow and an understanding of what is expected of participants, and to provide for thorough and timely hearings.
- (2) In an effort to provide timely hearings, OAR 839-050-0000 to 839-050-0440 establish time limitations which will be strictly followed. Waiver or extension of set time limitations will be granted only under the limited circumstances as set forth in these rules.
- (3) OAR 839-050-0000 to 839-050-0440 apply to all contested case proceedings pending with or received by the hearings unit on or after the effective date of OAR 839-050-0000 to 839-050-0440. The administrative law judge may adjust any conflicts or uncertainties in time requirements resulting from such application.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0020; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0010**

**Model Rules of Procedure**

The Attorney General's Model Rules of Procedure, effective September 9, 1995, are hereby adopted by reference as permanent rules for the hearings unit of the Bureau of Labor and Industries except to the extent modified in this division or any other division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR chapter 839, division 050. The rules for expedited contested case proceedings in certain licensing matters are set forth in OAR chapter 839, division 033. The rules for expedited contested case proceedings for proposed cancellations of apprenticeship agreements are set forth in OAR chapter 839, division 018.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0022; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0020**

**Definitions**

The following definitions apply, unless the context requires otherwise, to OAR 839-050-0000 through 839-050-0440:

- (1) "Administrative Law Judge" means the commissioner or an individual or a special tribunal designated by the commissioner to preside over all aspects of a contested case hearing including motions, oral or written hearings, preparation of the proposed order and assistance in preparation of the final order. The administrative law judge may or may not be an employee of the agency.
- (2) "Agency" means the Bureau of Labor and Industries and any employee thereof, and includes the bureau when acting as the agent of another governmental entity, but for purposes of these rules does not refer to the administrative law judge or the commissioner.
- (3) "Case Presenter" means the agency staff person assigned to present the case for the agency at the contested case hearing and to handle all related matters, but does not include counsel for the agency.
- (4) "Charging Document" means any document issued by the Bureau of Labor and Industries stating that any person, entity, or government agency has violated the laws over which this agency has jurisdiction and includes, but is not limited to:
  - (a) Specific Charges;
  - (b) Order of Determination;
  - (c) Notice of Intent to Revoke License;
  - (d) Notice of Intent to Deny License;
  - (e) Notice of Intent to Refuse to Renew a License;
  - (f) Notice of Intent to Place Name on List of Ineligibles;
  - (g) Notice of Intent to Assess Civil Penalties;
  - (h) Notice of Intent to Suspend or Revoke License or to Assess Civil Penalty in Lieu Thereof.
- (5) "Claimant" means any individual who has filed a wage claim pursuant to ORS chapter 652 or 653 and who has assigned that claim to the commissioner.
- (6) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(7) "Complainant" means an individual who has, or whose attorney has, filed a complaint pursuant to ORS chapters 658 or 659, those statutes in ORS chapter 279 enforced by the Bureau of Labor and Industries, and any laws, regulations, or

ordinances enforced by the bureau as the agent of another governmental entity.

(8) "Counsel" means an attorney who is a member in good standing with the Oregon State Bar or a member in good standing of the bar of any United States court or the highest court of any state who is permitted to appear in a particular proceeding by order of the administrative law judge. Such permission shall be given only in compliance with the requirements of ORS 9.241 and Uniform Trial Court Rule 3.170.

(9) "Counsel for the Agency" means the Attorney General or his or her designee. Where the Attorney General cannot represent the agency, the agency shall arrange for the services of a private attorney.

(10) "Good Cause" means, unless otherwise specifically stated, that a participant failed to perform a required act due to an excusable mistake or a circumstance over which the participant had no control. "Good cause" does not include a lack of knowledge of the law including these rules.

(11) "Hearings Unit" means the section of the Bureau of Labor and Industries that handles all aspects of administrative hearings. The address for the unit is: Bureau of Labor and Industries, Hearings Unit, Suite 1005, 800 N.E. Oregon Street, #32, Portland, OR 97232-2162.

(12) "Issuance" means the act of sending out a document from the hearings unit. For purposes of these rules, the date of issuance is the date, as noted on the document, that the document was sent out from the hearings unit.

(13) "Participant" means any party, including any person or entity granted party status under OAR 137-003-0005, or the agency involved in a particular contested case proceeding.

(14) "Party" means:

(a) Any person, government agency, or entity upon whom a charging document has been served;

(b) Any person, government agency, or entity that has been granted party or limited party status under OAR 137-003-0005.

(15) "Service" means, for purposes of these rules, the method of forwarding documents and includes personal service, registered or certified mail, hand delivery, fax, or regular U.S. Mail.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0025; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0030**

**Service of Documents**

(1) The charging document shall be served on the party or the party's representative by personal service or by registered or certified mail. Service of a charging document is complete upon receipt by the party.

(2) All other documents may be served on the party or the party's representative at the last known address in the agency file for the case to be heard. Service of a document other than the charging document is complete upon issuance by the hearings unit, upon personal service, or upon mailing.

(3) Any participant to a contested case proceeding filing a document with the hearings unit shall serve a copy of such document upon all other participants or their representatives.

(4) Each party shall notify the hearings unit and the agency of the party's change of address. Such notice shall be in writing and served on the hearings unit and the agency within 10 days of the party's change of address. Unless the hearings unit and the agency have been so notified, they shall presume that the party's address on file with the agency is correct.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0030

**839-050-0040**

**Calculation of Time and Filing Dates**

(1) The computation of any period of time will not include the day from which the designated period begins to run. The computation will include the last day of this period unless it is a Saturday, Sunday, or holiday officially recognized by the State of Oregon or the federal government. If the last day of the time period is a Saturday, Sunday, or holiday, the period shall run until 5 p.m. of the next day which is not a Saturday, Sunday, or holiday.

(2) Except as modified by statute or enlarged by these rules, by order of the commissioner, or by decision of the administrative law judge, a document is filed either on the date received by the hearings unit, or on the date postmarked on the properly addressed document, whichever is earliest.

(3) All time periods described in these rules are measured in calendar days.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0035; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0050**

**Timeliness**

(1) Any document that is filed with the hearings unit beyond the established number of days for submittal may be disregarded by the administrative law judge.

(2) Where a participant requires additional time to submit any document, a written request for such extension must be submitted to the hearings unit no later than the date set for submission of the document in question. The administrative law judge may grant such an extension of time only in situations where the need for more time is due to circumstances beyond the control of the participant so requesting or where refusal to extend the time would create an undue hardship on the participant so requesting. The administrative law judge shall notify the participant that requested the extension whether it will be allowed.

(3) Where an extension of time is allowed to a participant, the administrative law judge shall advise all other participants of the extension and the new due date, and that such participants shall have the same extension of time.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0040; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0060**

**Charging Documents**

- (1) A charging document shall contain:
  - (a) A reference to the particular statutes or administrative rules involved in the violation;
  - (b) A short and concise statement of the matters that constitute the violation; and
  - (c) A statement of the remedies sought and, where appropriate, the penalty imposed.
- (2) A charging document may contain:
  - (a) A statement that when a party fails to request a hearing within the established time limitation, or having made a timely request subsequently withdraws it, the agency file shall constitute the evidentiary record of the proceeding;
  - (b) A statement that when, following an answer and a request for hearing (when required), the party subsequently notifies the agency that it will not appear at the time and place specified for hearing, or, without such notification, the party fails to appear at hearing, the agency's file shall automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and
  - (c) A statement that when a party fails to answer a charging document, the agency file shall automatically become part of the contested case record upon default for the purpose of proving a prima facie case.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0050; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0070**

**Request for a Contested Case Hearing**

Except in cases where Specific Charges are filed, any party who wants to contest a charging document shall request a contested case hearing. This request must be in writing and filed with the agency within the time limit established in the charging document. Where a party fails to file a request for a hearing within the time limit established in the charging document, or where a party requests a hearing and subsequently withdraws the request, the party will be in default as to those charges.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0051; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0080**

**Notice of Hearing**

- (1) When a party makes a timely written request for a contested case hearing, that hearing shall be scheduled in accordance with OAR 839-050-0070 and the party shall receive a notice of hearing. The hearings unit shall issue a notice of hearing to the participants.
- (2) In cases where Specific Charges are filed, the a notice of hearing shall accompany the Specific Charges.
- (3) The notice of hearing shall contain:
  - (a) A statement of the time and place of the hearing, including the statement that the hearing will reconvene on successive business days thereafter until concluded;
  - (b) A statement of the authority and jurisdiction under which the hearing is to be held;
  - (c) A reference to the particular sections of the statutes and rules involved;
  - (d) A short and plain statement of the matters asserted or charged;
  - (e) The name of the administrative law judge designated by the Commissioner to preside at the hearing and whether the administrative law judge is an employee of the agency;
  - (f) A statement indicating whether or not the case for the agency will be presented by the Department of Justice.
- (4) The notice of hearing may contain:
  - (a) A statement that when a party fails to request a hearing within the time limit established, or having made a timely request subsequently withdraws it, the agency file shall constitute the evidentiary record of the proceeding;
  - (b) A statement that when, following an answer and request for hearing (when required), the party subsequently notifies the agency that the party will not appear at the time and place specified for hearing, or, without such notification, the party fails to appear at the hearing, the agency file shall become part of the contested case record upon default for the purpose of proving a prima facie case; and
  - (c) A statement that when a party fails to answer a charging document, the agency file shall become part of the contested case record upon default for the for the purpose of proving a prima facie case.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0055; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0090**

**Location of Contested Case Hearings**

Contested case hearings will generally be held in a State of Oregon Office Building nearest the location where the action arose.

Stat. Auth.: ORS Ch. 183 & 651.060(4)



Stats. Implemented: ORS 279.361, 651.060(1), 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0045; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0100**

**Information for Contested Case Hearings**

The hearings unit shall provide a statement of information for all parties involved in a contested case hearing that contains:

- (1) Instructions that all filings, correspondence and documents shall be transmitted to the administrative law judge, through the hearings unit at this address: Bureau of Labor and Industries, Hearings Unit, Suite 1005, 800 N.E. Oregon Street, #32, Portland, OR 97232-2162.
- (2) The information required under ORS 183.413(2) concerning the rights of the parties to the hearing.
- (3) A statement that an order may be issued upon default if a party who has requested a hearing fails to appear at the hearing and if the agency has presented a prima facie case on the record.
- (4) A statement that the party's address as it appears in the agency's files, and to which the notice has been sent, will be the address used throughout the proceeding. A party whose address changes must notify the agency; otherwise, the agency shall presume the address on file to be correct.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0056; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0110**

**Representation of a Party in a Contested Case Proceeding**

- (1) Any party may be represented by counsel. All government agencies, corporations and unincorporated associations must be represented by counsel in accordance with ORS 9.320 and either 9.160 or 9.241. Counsel may perform all functions consistent with representation of a client.
- (2) Once the contested case hearing has begun, no party will be allowed a recess to obtain the services of counsel.
- (3) In addition to counsel, a party who is a government agency, corporation, or unincorporated association may have present at hearing one natural person designated to assist in the party's case.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 9.160, 9.241, 9.320, 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820, 659.060 & UTCR 3.170

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0057; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0120**

**Representation of a Claimant or Complainant in a Contested Case Proceeding**

The claimant or complainant may have counsel present at the contested case hearing; however counsel's participation is limited to rendering advice to his or her client. Such counsel may not file motions, make objections, examine or cross examine witnesses or make legal argument.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0058

**839-050-0130**

**Responsive Pleadings**

(1) A party filing a written request for a hearing or a party served with Specific Charges must file a written response, referred to as an "answer", to the allegations in the charging document. The party must file the answer within 20 days after receiving the charging document, except that the party must file the answer within 60 days after receiving the charging document if that document proposes to deny a license. The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations. A general denial is not sufficient to constitute an answer. Where the answer does not include the information required by this rule, the answer may be disregarded and a notice of default may be issued in accordance with OAR 839-050-0330, as if no answer had been filed.

(2) Except for good cause shown to the administrative law judge, factual matters alleged in the charging document, and not denied in the answer, shall be deemed admitted by the party. The failure of the party to raise an affirmative defense in the answer shall be deemed a waiver of such defense. Any new facts or defenses alleged in the answer shall be deemed denied by the agency. Evidence shall not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer, except for good cause shown to the administrative law judge, or pursuant to amendment under OAR 839-050-0140.

(3) Any party intending to be represented by counsel at the contested case hearing must so notify the agency in the answer, or as soon thereafter as possible.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 83.435, 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0060; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0140**

**Amendments**

(1) Prior to the hearing a participant may amend its pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a participant may amend its pleading only by permission of the administrative law judge or by written consent of the other participants; permission shall be freely given when justice so requires.

(2)(a) After commencement of the hearing, issues not raised in the pleadings may be raised and evidence presented on

such issues, provided there is expressed or implied consent of the participants. Consent will be implied where there is no objection to the introduction of such issues and evidence or where the participants address the issues. The administrative law judge may address and rule upon such issues in the proposed order. Any participant raising new issues must move the administrative law judge to amend its pleading to conform to the evidence and to reflect issues presented;

(b) If evidence is objected to at hearing on the grounds that it is not within the issues raised by the pleadings, the administrative law judge may allow the pleadings to be amended, and shall do so freely, when the presentation of the merits of the action or defense will be served thereby, and the objecting participant fails to satisfy the administrative law judge that the admission of such evidence would substantially prejudice the objecting participant in maintaining the action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting participant to meet such evidence;

(c) Charging documents may be amended to request increase damages or, where appropriate, penalties to conform to the evidence presented at the contested case hearing.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0075; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0150**

**Motions**

All motions must be submitted in writing to the administrative law judge through the hearings unit. The nonmoving participant shall respond to a written motion within seven days after service of the motion, unless the administrative law judge orders otherwise. Motions include but are not limited to the following:

(1) Motion to Dismiss: This motion shall be based upon:

- (a) Lack of jurisdiction over the subject matter or person;
- (b) Insufficiency of process or service of process; or
- (c) Failure to state a claim upon which relief can be granted.

(2) Motion to Change the Place of Hearing.

(3) Motion to Exclude Witnesses:

- (a) For purposes of exclusion, the parties or agency staff presenting a case are not considered witnesses. The motion may be made by any participant at any time prior to or during the hearing. The administrative law judge may, without a motion being made by a participant, exclude witnesses until the time of final argument;
- (b) The complainant or claimant, as appropriate to the case, is not subject to exclusion under this rule;
- (c) A natural person who is a party under these rules or who is a party's designated representative under OAR 839-050-0110(3) is not subject to exclusion under this rule.

(4) Motion for Summary Judgment:

- (a) A motion for summary judgment may be made by a participant, or by decision of the administrative law judge, for

an accelerated decision in favor of any participant as to all or part of the issues raised in the pleadings. The motion may be based on any of the following conditions:

(A) Issue or claim preclusion;

(B) No genuine issue as to any material fact exists and the participant is entitled to a judgment as a matter of law, as to all or any part of the proceedings; or

(C) Such other reasons as are just.

(b) In cases where the administrative law judge grants the motion, the decision shall be set forth in the proposed order.

(5) Motion for a Postponement:

(a) Any participant making a request for a postponement of any part of the contested case proceeding must state in detail the reason for the request. The administrative law judge may grant the request for good cause shown. In making this determination, the administrative law judge shall consider:

(A) Whether previous postponements have been granted;

(B) The timeliness of the request;

(C) Whether a participant has previously indicated it was prepared to proceed;

(D) Whether there is a reasonable alternative to postponement; for example, submitting a sworn statement of a witness; and

(E) The date the hearing was originally scheduled to commence.

(b) The administrative law judge shall issue a written ruling either granting or denying the motion and shall set forth the reasons therefore;

(c) If all participants agree to a postponement, in order for the postponement to be effective, the administrative law judge must approve of this agreement. Whether the administrative law judge grants or denies such a motion for postponement, the administrative law judge shall issue a written ruling setting forth the reasons therefore.

(6) Motion for Consolidation of Hearings: This motion must allege facts sufficient to meet the criteria of OAR 839-050-0190.

(7) Motion for Hearing by Telephone: Any participant may file a motion to conduct the hearing by telephone. The motion must contain:

(a) A statement setting forth the reason(s) for the request;

(b) A statement explaining why no participant will be substantially prejudiced by having a hearing in this manner;

(c) A statement of the location of the majority of witnesses expected to be called;

(d) A statement estimating the number and/or volume of documents to be introduced into the record;

(e) A statement indicating whether the participant intends to call any expert witness; and

(f) A statement indicating whether an interpreter or an assistive communication device under OAR 839-050-0300 will be required for any witness.

(8) Motion for an Earlier Hearing Date: After issuance of a notice of hearing, a participant may request an earlier

hearing date upon a showing that the purposes of the law or the interests of justice would be otherwise frustrated.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0070; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0160**

**Disqualification of Administrative Law Judge**

- (1) An administrative law judge may withdraw from a proceeding whenever the administrative law judge determines disqualification to be necessary. Any party to any contested case may claim that the person designated as administrative law judge is prejudiced against any party or counsel or the interest of any party or counsel appearing in such case. Such prejudice shall be established by a motion supported by an affidavit establishing that the designated administrative law judge is prejudiced against the party or counsel, or the interest of the party or counsel, such that the party or counsel cannot, or believes that he or she cannot, have a fair and impartial hearing before the administrative law judge, and that it is made in good faith and not for the purpose of delay. Grounds upon which a motion may be made, or upon which the administrative law judge may determine that disqualification is necessary, include but are not limited to: A family relationship with the complainant or claimant or with any party or counsel, or a financial interest in the property or business of any of those individuals.
- (2) The motion and affidavit must be filed together within ten days after the administrative law judge is designated to preside over the contested case proceeding. No motion to disqualify an administrative law judge may be made after the administrative law judge has ruled upon any motion, other than a motion to extend time in the case, or after the hearing has commenced, whichever is earlier. No party or counsel shall be permitted to make more than one assertion of prejudice under this section in any one contested case.
- (3) The administrative law judge shall issue a written ruling on the motion to withdraw, setting forth the grounds therefor, within ten days of the receipt of the motion. The ruling shall be sent to the commissioner, the agency and all parties.
- (4) Where an administrative law judge has been disqualified, the commissioner shall designate another administrative law judge to preside over the contested case proceeding. The hearings unit shall notify the participants of this designation.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0065; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0170**

**Joinder of Parties, Claimants, or Complainants**

- (1) Complainants or Claimants: Any number of persons may be joined in one action as complainants or claimants if they assert a right to relief arising out of the same or similar transactions(s) or occurrence(s) and if questions of law or fact common to all these person will arise in the action.

- (2) Parties: Any number of persons may be joined in one action as parties if there is asserted against them any right to relief arising out of the same transaction(s) or occurrence(s) and if questions of law or fact common to all these persons will arise in the action.
- (3) The final order may find for or against one or more of the complainants or claimants or parties according to their respective rights or liabilities.
- (4) Misjoinder of complainants, claimants, or parties is not a ground for dismissal of an action. Parties may be added or deleted by order of the administrative law judge upon the motion of any participant, or upon the application of any person or entity seeking party or limited party status, at any stage of the contested case proceeding. Where necessary to complete disposition of the case, the administrative law judge may postpone the hearing to allow a newly added complainant, claimant, or party to prepare for the hearing.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0085; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0180**

**Dual Hearings**

- (1) The commissioner may hold a hearing in conjunction with the Wage and Hour Commission to resolve the allegations set forth in two or more charging documents where:
  - (a) The same evidence must be presented in both cases; and
  - (b) There will not be substantial prejudice to any party.
- (2) The issues in both cases need not be the same, nor must the same enforcement means or damages be sought.
- (3) Such hearings may be combined even where the commissioner and the Wage and Hour Commission must issue separate final orders.
- (4) The same administrative law judge may be designated by the commissioner as is designated by the Wage and Hour Commission to conduct the hearing. Conduct of the hearing includes establishing the procedure for the hearing, questioning of witnesses, and ruling on motions and objections to evidence.
- (5) The administrative law judge shall issue a proposed order to the commissioner in the case. All other rules governing the issuance of any charging document or the hearings process apply to dual hearings.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0090; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0190**

**Consolidation of Hearings**

The administrative law judge may order a joint contested case hearing for two or more cases where the administrative law judge determines that the cases involve common questions of law or fact. The administrative law judge, in conducting the hearing, may establish such procedures as necessary to avoid additional costs or delay.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0095; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0200**

**Discovery**

(1) In his or her discretion, the administrative law judge may order discovery by a participant in appropriate cases. This rule does not require the administrative law judge to authorize any discovery. If the administrative law judge does authorize discovery, the administrative law judge shall control the methods, timing and extent of discovery, but nothing in this rule prevents informal exchanges of information. Where the administrative law judge orders discovery, the administrative law judge shall notify the participants of the possible sanction, pursuant to section (8) of this rule, for failure to provide the discovery ordered.

(2) Discovery may include but is not limited to one or more of the following:

- (a) Depositions;
- (b) Disclosure of names and addresses of witnesses expected to testify at the hearing;
- (c) Production of documents;
- (d) Production of objects for inspection or permission to enter upon land to inspect land or other property;
- (e) Requests for admission.

(3) Except as provided for in section (7) of this rule, before requesting a discovery order, a participant must seek the discovery through an informal exchange of information.

(4)(a) A participant that seeks to take the testimony of a material witness by deposition shall file a written request with the administrative law judge. The request shall set forth the name of the witness, a showing of materiality of the witness's testimony, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request that the witness's testimony be taken before a notary public or other person authorized by law to administer oaths;

(b) Except as provided for in section (7) of this rule, for all other forms of discovery, a request for a discovery order must be filled with the hearings unit, be in writing, and must include a description of the attempts to obtain the requested discovery informally. The administrative law judge shall consider any objections by the participant from whom discovery is sought.

(5) Any discovery request must be reasonably likely to produce information that is generally relevant to the case. If the relevance of the requested discovery is not apparent, the administrative law judge may require the participant requesting discovery to explain how the request is likely to product relevant information. If the request appears unduly burdensome, the administrative law judge may require an explanation of why the requested information is necessary or is likely to facilitate resolution of the case.

(6) The administrative law judge shall issue an order granting or denying a discovery request in whole or in part.

(7) Unless limited by the administrative law judge, the participants may issue subpoenas in support of discovery. The administrative law judge may issue subpoenas in support of discovery for any party not represented by counsel. The Bureau of Labor and Industries may apply to the circuit court to compel obedience to a subpoena. Where a participant issues a subpoena in support of discovery, the participant shall notify the other participants of the possible sanction, pursuant to section (8) of this rule, for failure to provide the discovery subpoenaed.

(8) The administrative law judge may refuse to admit evidence which has not been disclosed in response to a discovery order or subpoena, unless the participant that failed to provide discovery offers a satisfactory reason for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence which was not disclosed as ordered or subpoenaed, the administrative law judge may grant a continuance to allow an opportunity for the other participant(s) to respond.

(9) The authority to order and control discovery rests with the administrative law judge.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-115; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0210**

**Summary of the Case**

(1) Prior to any contested case hearing, the administrative law judge may issue a discovery order directing the participants to prepare a summary of the case containing any or all of the following:

(a) A list of all persons to be called as witnesses, including expert witnesses, at the hearing, except that impeachment or rebuttal witnesses need not be include on the witness list; in the case of an expert witness, the qualifications of the expert and the substance of the facts and opinions to which the expert is expected to testify;

(b) Identification and description of any document or other physical evidence to be offered into evidence at the hearing, together with a copy of any such document, except that evidence offered solely for impeachment or rebuttal need not be identified or furnished;

(c) Statement of the defense to the claim;

(d) Statement of the elements of the claim;

(e) Statement of any agreed or stipulated facts.

(f) Statement of remedies proposed by the Agency and the reasons therefor, together with any damage computations;

(g) Statement, where appropriate, of any applicable agency policies together with, in the discretion of the agency, any supporting documents or information upon which such policies are based.

(2) Where a party is unrepresented by counsel, the administrative law judge may order the party to produce a summary of the case containing only the information and documents described in subsections (1)(a) and (b) of this rule.

(3) Following the production of the summary of the case and before the start of the hearing, participants shall, as soon as practicable, provide to the other participants and the hearings unit any newly discovered matter, such as a document,



that is within the scope of the discovery order.

(4) Where the administrative law judge orders a summary of the case, the administrative law judge shall notify the participants of the possible sanction, pursuant to OAR 839-050-0200(8), or failure to provide the summary of the case.

(5) If a participant fails to comply with the administrative law judge's discovery order issued pursuant to this rule, the administrative law judge shall apply the provisions of OAR 839-050-0200(8).

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 6-1989, f. & cert. ef. 9-5-89; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0071; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0220**

**Settlement**

(1) Where a party is interested in reaching a settlement of the case prior to the contested case hearing, the party should contact the individual listed in the notice of hearing who is scheduled to present the case for the agency. Settlement negotiations do not serve as a basis for a postponement and participants should continue to prepare for hearing until a settlement is reached and the hearings unit is so notified.

(2) Where a settlement is reached more than ten days before the date of hearing, the agency shall immediately notify the hearings unit, and the summary of the case otherwise required need not be filed with the hearings unit within the time limit set by the administrative law judge. If the participants have failed to submit fully executed settlement documents to the hearings unit before the date set for hearing, then on that date the participants shall:

- (a) Submit all necessary settlement documents, fully executed;
- (b) Set forth the terms of the settlement on the record; or
- (c) Notify the administrative law judge that a settlement has not been consummated, in which event the hearings unit will reschedule the hearing for a date no sooner than 20 days from the original date set for hearing.

(3) After a hearing is reset pursuant to subsection (2)(c) of this rule, no postponement will be granted on the basis of a purported settlement agreement.

(4) Where a case is settled within ten days before or on the date set for hearing, the terms of the settlement shall be placed on the record, unless fully executed settlement documents are submitted on or before the date set for hearing.

(5) Where settlement terms are placed on the record because settlement documents are incomplete, as described in subsection (2)(b) and section (4) of this rule, fully executed settlement documents must be submitted to the hearings unit within ten days after the date set for hearing. Where a party fails to submit the settlement documentation within ten days after the date set for hearing, the terms of the settlement set forth on the record shall constitute the basis for a final order.

(6) Relief from the time limitations set forth in this rule may be granted pursuant to OAR 839-050-0050.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 6-1989, f. & cert. ef. 9-5-89; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-200; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0230**

### **Authority of the Case Presenter**

- (1) The case presenter is authorized by ORS chapter 183 to appear on behalf of and represent the agency. The case presenter can perform any function not prohibited by this rule.
- (2) The case presenter may not make legal argument:
  - (a) Legal argument includes arguments on:
    - (A) The jurisdiction of the agency to hear the contested case;
    - (B) The constitutionality of a statute or rule or the application of a constitutional requirement to the agency; and
    - (C) The application of court precedent to the facts of the particular contested case proceeding.
  - (b) Legal argument does not include opening and closing statements, presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:
    - (A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;
    - (B) Comparison of prior actions of the agency;
    - (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and
    - (D) The admissibility of evidence or the correctness of procedures being followed.
- (3) When a case presenter is representing the agency in a hearing, the administrative law judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the case presenter to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0059; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0240**

### **Responsibilities of the Administrative Law Judge**

The commissioner designates as administrative law judges those employees who are employed by the agency as hearings officers, and those persons who are appointed to preside at particular hearings. The commissioner delegates to such designee the authority to:

- (1) Rule on all motions filed prior to the hearing.

- (2) Issue subpoenas and order the taking of depositions in a manner consistent with rules relating to these powers.
- (3) Hold appropriate conferences, if necessary, before or during the course of the hearing to discuss the conduct of the proceedings or the issues to be presented.
- (4) Regulate the course of the hearing including scheduling, reconvening and adjourning.
- (5) Maintain order during the course of the hearing, including the authority to expel persons whose conduct is disruptive.
- (6) Make rulings on motions or evidence, with or without objection, during the hearing.
- (7) Question witnesses at the hearing and set time limitations for argument or presentation.
- (8) Limit or extend filing periods.
- (9) Decide procedural matters, but not grant motions for summary judgment or other motions by a party which involve final determination of the proceeding, but to issue a proposed order as provided for in these rules. Nothing in this section shall be construed to prohibit the administrative law judge from making a routine disposition of a hearing proceeding based on a settlement, on the agency's withdrawal of the charging document, or on other reasons not requiring a final order by the commissioner.
- (10) Prepare a proposed order at the conclusion of the contested case hearing and send it to the agency, the commissioner, and all parties to the case; and at the request of the commissioner, assist in responding to any exceptions and the preparation of the final order.
- (11) Take any other action consistent with the duties of an administrative law judge.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-100; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0250**

**Conduct of Hearings**

The hearing shall be conducted by and shall be under the control of the administrative law judge. At the discretion of the administrative law judge, the hearing, including hearings held by telephone, may be conducted in the following manner:

- (1) The administrative law judge shall open the hearing with a brief introduction of the agency, the parties and issues, including all information required by ORS 183.413(2) and 183.415(7).
- (2) Each participant shall be given an opportunity to present a summary of the evidence and issues to be presented at the hearing.
- (3) The agency shall present evidence in support of the charging document.
- (4) Any person, government agency, or entity granted party status may present additional evidence in support of the charging document.
- (5) Each party, including those granted party status, opposing the charging document shall present evidence in support of the party's respective position.

- (6) The participants shall have the right to conduct cross-examination of adverse witnesses.
- (7) The participants may present rebuttal evidence.
- (8) The participants shall be given the opportunity to make a closing statement at the conclusion of the testimony.
- (9) The administrative law judge shall have the right to question any witness. The administrative law judge may request any participant to provide additional evidence, and may recess the hearing where necessary to allow the participant the opportunity to gather and present the requested evidence.
- (10) In any proceeding the administrative law judge may, at the administrative law judge's discretion, call the participants together before the hearing for a conference in order to ascertain what is disputed, hear argument upon motions, order discovery, or resolve procedural matters. At any time during the hearing, the administrative law judge may recess the hearing in order to conduct such a conference. The results of any conference shall be summarized on the record, except that argument upon motions shall be recorded verbatim.
- (11) Where the testimony of a witness who cannot be present at the hearing is necessary to the complete and fair adjudication of the case, the administrative law judge may admit testimony of the witness by telephone. In such cases:
  - (a) The testimony of the witness shall be broadcast simultaneously to all participants and the administrative law judge;
  - (b) All rules governing the questioning of witnesses present at the hearing apply to witnesses whose testimony is taken by telephone; and
  - (c) The participant presenting the witness by telephone shall provide the witness's telephone number and the approximate time that the witness will be available.
- (12) The agency shall have the right to submit a statement of policy concerning any issue which may arise in the course of the hearing.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-105; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0255**

### **Telephone Hearings**

- (1) The administrative law judge may, in his or her discretion, hold a hearing or portion of a hearing by telephone. Nothing in this rule precludes the administrative law judge from allowing some parties or witnesses to attend by telephone while others attend in person.
- (2) The administrative law judge may direct that a hearing be held by telephone upon request or on the administrative law judge's own motion.
- (3) Unless otherwise ordered by the administrative law judge, 10 days before the telephone hearing each participant shall deliver to the hearings unit and each other participant copies of documentary evidence that it will seek to introduce into the record and a list of all persons to be called as witnesses.
- (4) The administrative law judge may refuse to admit evidence which has not been disclosed as required by section (3)

of this rule, unless the participant that failed to provide the documentary evidence and the list of witnesses offers a satisfactory reason for having failed to do so or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence which was not disclosed as required, the administrative law judge may grant a continuance to allow an opportunity for the other participant(s) to respond.

(5) As used in OAR 839-050-0000 to 839-050-0440, "telephone" means any two-way electronic communication device.

Stat. Auth.: ORS Ch. 183&651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0260**

### **Evidence**

(1) All evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs, including hearsay if reliable, will be admissible.

(2) Irrelevant, immaterial or unduly repetitious evidence may be excluded.

(3) The burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition.

(4) The burden of presenting evidence to establish a prima facie case rests with the agency.

(5) Where appropriate, the burden of proving failure to mitigate damages rests with the party.

(6) Any witness, including agency staff, may submit evidence to the administrative law judge.

(7) All offered evidence to which there is no objection may be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial or unduly repetitious matters.

(8) Evidence on which an objection is made may be taken by the administrative law judge. Rulings on the admissibility or exclusion of this evidence will be made at the hearing or at the time the proposed order in the case is issued.

(9) Any affidavit, certificate or document included with a summary of the case as required by OAR 839-050-0210(1)(b), or, when no summary of the case is required, any affidavit, certificate or document that a participant serves on the other participants at least ten days before hearing may be offered and received into evidence unless cross-examination is requested of the affiant, certificate preparer, or other document preparer or custodian within five days prior to hearing. An affidavit or certificate may be offered and received with the same effect as oral testimony.

(10) If cross-examination is requested of the affiant, certificate preparer or other document preparer or custodian as provided in section (9) of this rule and the other participants are informed within five days prior to the hearing that the person will not appear for cross-examination, but the affidavit, certificate or other document will be offered in evidence, the same may be received in evidence, provided the administrative law judge determines that:

(a) The contents of same are of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(b) The participant requesting cross-examination would not be substantially prejudiced by the lack of cross-examination.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-120; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0270**

**Exhibits**

- (1) Exhibits shall be premarked by the participants. Agency exhibits shall be marked with "A" (for example, A-1, A-2, etc.), and respondent exhibits shall be marked with "R" (for example, R-1, R-2, etc.). The exhibits received shall be preserved by the administrative law judge as part of the record of the proceedings.
- (2) All paper exhibits must be no larger than 8-1/2 by 11 inches in size and the participant presenting this exhibit shall have four copies of the exhibit prepared.
- (3) Larger exhibits are allowed; however, in order to be included in the record, the information contained in the exhibit shall be reduced to paper 8-1/2 by 11 inches in size.
- (4) Variation from these requirements will be allowed only in cases where there is no reasonable alternative.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-125; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0280**

**Stipulation**

- (1) Participants to a contested case may agree, by stipulation, upon all or some of the facts involved in the controversy, subject to the approval of the administrative law judge. It shall be binding upon those who agree to it and be regarded and used as evidence at the hearing. The administrative law judge will be bound by the facts set forth in the stipulation, but not by any conclusion drawn from those facts.
- (2) Any party interested in stipulating to all or any part of the facts involved in the case should contact the individual listed in the notice of hearing, to present the case for the agency at the contested case hearing. The agency may also contact any party requesting that a stipulation be entered on all or any part of the facts.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-135; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0290**

**Witnesses**

All testimony to be taken at the hearing, except matters officially noticed or entered by stipulation, shall be sworn or affirmed. This may include testimony given on deposition or by affidavit.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-140

**839-050-0300**

**Interpreters and Assistive Communication Devices**

(1) When a person who cannot speak or understand the English language, or who has a physical hearing impairment or physical speaking impairment, is involved in a contested case hearing, such person is entitled to a qualified interpreter or appropriate assistive communication device. All interpreters shall be appointed by the administrative law judge. In order to obtain the services of an interpreter or to obtain an assistive communication device, a participant must notify the administrative law judge no later than 20 days before the hearing.

(2) Upon receipt of such request, the hearings unit will arrange for the services of an interpreter or for the use of an assistive communication device and shall notify the participants of the identity of the interpreter. The agency shall compensate the interpreter and provide for the use of an assistive communication device at the agency's expense where necessary.

(3) Agency staff may serve as an interpreter where the party or parties consent and so state on the record.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-145; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0310**

**Ex Parte Communications**

The administrative law judge shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the administrative law judge while the proceeding is pending. Participants shall be given notice of such ex parte communication and of their right to rebut the substance of the ex parte communication on the record.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-101; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0320**

**Official Notice**

The administrative law judge may take notice of judicially recognizable facts and of general, technical or scientific facts. Participants shall be notified at any time during the proceeding of material officially noticed, and they will be afforded the opportunity to contest the fact so noticed. The notice required by this section may be given to the participants during the hearing, prior to the issuance of the proposed order, or in the proposed order in the matter.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-130; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0330**

**Default**

- (1) Default can occur in four ways:
  - (a) Where a party fails to file a required response, including a request for hearing or an answer, within the time specified in the charging document;
  - (b) Where a party withdraws a request for hearing;
  - (c) Where the hearings unit has scheduled a hearing and the party notifies the agency or the administrative law judge that the party will not appear at the specified time and place; and
  - (d) Where a party fails to appear at the scheduled hearing.
- (2) When a party notifies the agency that it will not appear at the specified time and place for the contested case hearing or, without such notification, fails to appear at the specified time and place for the contested case hearing, the administrative law judge shall take evidence to establish a prima facie case in support of the charging document and shall then issue a proposed order to the commissioner and all participants pursuant to OAR 839-050-0370. Unless notified by the party, the administrative law judge shall wait no longer than 30 minutes from the time set for the hearing in the notice of hearing to commence the hearing.
- (3) When a party is in default and the administrative law judge has not granted relief from default, the administrative law judge shall not permit the party to participate in any manner in the subsequent hearing, including, but not limited to, presentation of witnesses or evidence on the party's own behalf, examination of agency witnesses, objection to evidence presented by the agency, making of motions or argument, and filing exceptions to the proposed order.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-185; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0340**

**Relief from Default**

- (1) Relief from default may be granted where good cause is established within ten days of any of the following:



- (a) A final order by default has been issued by the administrator of the Wage and Hour Division;
  - (b) A notice of default has been issued; or
  - (c) A party has failed to appear at a hearing.
- (2) The request for relief from default shall be in writing and shall be accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting the claim of good cause.
- (3) A request for relief from default made after a final order by default has been issued shall be addressed to the administrator of the Wage and Hour Division and ruled upon by the presiding administrative law judge.
- (4) A request for relief from default made after a notice of default has been issued or after the party has failed to appear at a hearing shall be addressed to and ruled upon by the administrative law judge.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1987, f. 2-11-87, ef. 2-13-87; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-190; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0350**

### **Record of Proceeding**

- (1) A verbatim, written and/or mechanical record shall be made which shall include:
- (a) All pleadings, motions, correspondence, and rulings made by the administrative law judge;
  - (b) The summary of the case submitted by any participant;
  - (c) Evidence received or considered;
  - (d) Stipulations approved by the administrative law judge;
  - (e) A statement of matters officially noticed;
  - (f) Questions asked, offers of proof and objections and rulings made during the hearing;
  - (g) A statement of any ex parte communications on a fact at issue made to the administrative law judge;
  - (h) The proposed order by the administrative law judge;
  - (i) Exceptions or nonconfidential advice from counsel to the agency;
  - (j) Policy statements submitted by the agency; and
  - (k) The final order by the commissioner.
- (2) The record in the case does not close until the hearings unit has received all documents, statements, and advice requested. The administrative law judge shall determine the date upon which the record closed.
- (3) The written or mechanical record will not be transcribed unless requested for purposes of court review.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-150; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0360**

**Post-Hearing Briefs**

- (1) The administrative law judge may request a post-hearing brief from a party. In such cases, the administrative law judge shall indicate the date by which such brief must be submitted in order to be considered.
- (2) The agency may submit a legal brief from the Attorney General or a statement of policy if the administrative law judge accepts a post-hearing brief from a party. In such cases, the administrative law judge shall indicate the date by which such legal brief or statement of policy must be submitted in order to be considered.
- (3) Nothing in this rule shall limit the administrative law judge's right to request a statement of policy from the agency.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-155; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0370**

**Proposed Orders**

- (1) The administrative law judge shall prepare and serve upon the commissioner and all participants a proposed order which shall include the following:
  - (a) Rulings, motions or objections, including those rulings previously reserved;
  - (b) Findings of fact, including those matters which are either agreed to as fact at the hearing or by stipulation, or which, when disputed, are determined by the administrative law judge to be a fact over contentions to the contrary, and must include:
    - (A) A concise statement of facts supporting the findings as to each contested issue of fact;
    - (B) Ultimate facts required to support the agency's order; and
    - (C) Credibility findings where credibility is of importance in the decision of the case, including the evidence relied upon to reach this finding and the relevance of that evidence.
  - (c) Conclusions of law;
  - (d) An opinion explaining the rationale for the findings of fact and conclusions of law; and
  - (e) An order setting forth the administrative law judge's suggested determination, where the proposed decision is adverse to the party, of the amount owed by the party and any other relief within the authority of the commissioner.

Where a charging document indicates that other necessary relief or remedy may be allowed by the commissioner, the administrative law judge may recommend such relief in the proposed order.

(2) When the administrative law judge serves the proposed order upon the participants, the administrative law judge shall notify the participants that written exceptions must be filed within ten days of the date of issuance of the proposed order. If the administrative law judge requests post-hearings briefs, legal advice, statements of agency policy, or other documentation, the participants shall be notified of the date by which such requested brief, advice, policy or documentation is to be filed.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 12-1986, f. 10-29-86, ef. 10-30-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-160; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0380**

### **Exceptions to Proposed Order**

(1) Any participant may file specific written exceptions to the proposed order. No oral argument is allowed on exceptions unless requested by the administrative law judge. Any new facts presented or issues raised in such exceptions shall not be considered by the commissioner in preparation of the final order.

(2) Exceptions filed by the agency may include factual summaries, statements of policy, corrections, prior agency decisions, but may not include legal argument as defined in OAR 839-050-0230 unless the agency is represented by counsel.

(3) Ten days from the date of issuance of the proposed order will be allowed for participants to file exceptions to the administrative law judge through the hearings unit. Pursuant to OAR 839-050-0050, participants may request an extension of time to file exceptions.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-165; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0390**

### **Legal Advice to the Administrative Law Judge**

The administrative law judge may, at any time during a contested case proceeding and before the issuance of a final order, request advice from counsel for the agency on any issue raised in the case. The administrative law judge will provide a copy of such advice to all participants and will include this advice in the record of the proceeding.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-170; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0400**

### **Agency Policy**

The administrative law judge may, at any time during a contested case proceeding and before the issuance of a final order, request that the agency submit a written statement indicating the agency's policy with regard to any statute or administrative rule at issue in the case. The administrative law judge shall provide a copy of such request and agency statement to the commissioner and all parties in the case and shall include the statement in the record of the proceeding.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-175; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0410**

### **Reopening the Contested Case Record**

The administrative law judge shall reopen the record where the administrative law judge determines additional evidence is necessary to fully and fairly adjudicate the case. In making this determination, the administrative law judge shall consider whether the evidence suggested for consideration could have been gathered prior to the hearing.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-195; BL 12-1996, f. & cert. ef. 12-10-96

## **839-050-0420**

### **Final Order**

(1) Except as provided in OAR 839-050-0220 or 839-050-0430, on the basis of the record considered as a whole, the commissioner shall issue a final order in writing which includes findings of fact, conclusions of law, opinion and order. The final order shall also contain a notice that the final order may be appealed to the Oregon Court of Appeals.

(2) The final order may contain different findings, conclusions or interpretations of law than did the proposed order.

(3) The final order may provide for a different determination of liability, alternative means of enforcement, damages, or where appropriate, penalties, than did the proposed order.

(4) Participants to a contested case shall be served a copy of the final order.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-30-180; BL 12-1996, f. & cert. ef. 12-10-96

**839-050-0430**

**Final Order by Default**

- (1) A final order by default may be issued by the administrator of the Wage and Hour Division when:
- (a) A party is given an opportunity to request a hearing and file an answer within the time specified in the charging document and fails to do so; or
  - (b) A party withdraws the party's request for hearing.
- (2) A final order by default may be issued only after a prima facie case in support of the charging document is made on the record. A prima facie case may be made from the agency's file, if designated as the record in the charging document, provided that the charging document contained a statement advising the party that a failure to request a hearing would result in a final order.
- (3) The participants will be served with a copy of the final order by default by regular U.S. mail.
- (4) Where a party has requested a hearing but either fails to attend the hearing or notifies the agency that it will not attend, the administrative law judge will issue a proposed order pursuant to OAR 849-050-0330(2) and the commissioner will issue a final order pursuant to OAR 839-050-0420.

Stat. Auth.: ORS Ch. 183 & 651.060(4)

Stats. Implemented: ORS 279.361, 652.332(3), 653.040(3), 658.115, 658.407(3), 658.820 & 659.060

Hist: BL 12-1996, f. & cert. ef. 12-10-96

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