

D R A F T

SUMMARY

Modifies information that must be included in itemized statement provided to employee each pay period. Requires employer to maintain time and pay records of terminated employee for three years from date of termination and to provide records to employee if requested. Establishes civil right of action for violation.

Authorizes Commissioner of Bureau of Labor and Industries to require employer that has not established regular payday to provide bond or cease conducting business until employer has provided bond. Authorizes commissioner to expend certain moneys in Wage Security Fund to administer and enforce provisions of wage and hour and minimum wage law.

Prohibits contractor or subcontractor, or contractor's or subcontractor's agent, from intentionally failing to pay prevailing rate of wage, reducing rate of wage for work that is not subject to prevailing wage in order to recoup prevailing wages that contractor, subcontractor or agent paid, withholding, deducting or diverting employee's wages other than as provided by law, entering into agreement under terms of which employee receives less than prevailing rate of wage for work that is subject to prevailing rate of wage, or otherwise permanently or indefinitely depriving employee of certain amount of prevailing wages employee is due. Punishes violation by maximum of five years' imprisonment, \$125,000 fine, or both. Authorizes commissioner to adopt rules.

Becomes operative January 1, 2017.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to wages; creating new provisions; amending ORS 652.125, 652.340,
3 652.409, 652.610 and 652.750; and declaring an emergency.

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

5 **SECTION 1.** ORS 652.610 is amended to read:

6 652.610. (1)(a) All persons, firms, partnerships, associations, cooperative

1 associations, corporations, municipal corporations, the state and its political
2 subdivisions, except the federal government and its agencies, employing, in
3 this state, during any calendar month one or more persons, [*and withholding*
4 *for any purpose any sum of money from the wages, salary or commission*
5 *earned by an employee, shall provide the employee on regular paydays with a*
6 *statement sufficiently itemized to show the amount and purpose of the de-*
7 *ductions made during the respective period of service that the payment*
8 *covers.*] **shall provide the employee on regular paydays and at other**
9 **times payment of wages, salary or commission is made, with an**
10 **itemized statement as described in paragraph (b) of this subsection.**

11 **(b) The statement required under this subsection must be a written**
12 **statement, sufficiently itemized to show:**

13 **(A) The date of the payment;**

14 **(B) The dates of work covered by the payment;**

15 **(C) The name of the employee;**

16 **(D) The name and tax identification number of the employer;**

17 **(E) The address and telephone number of the employer;**

18 **(F) The rate or rates of pay;**

19 **(G) Whether the employee is paid by the hour, shift, day or week**
20 **or on a salary, piece or commission basis;**

21 **(H) Gross wages;**

22 **(I) Net wages;**

23 **(J) The amount and purpose of each deduction made during the**
24 **respective period of service that the payment covers;**

25 **(K) Allowances, if any, claimed as part of minimum wage;**

26 **(L) Unless the employee is paid on a salary basis and is exempt from**
27 **overtime compensation as established by local, state or federal law,**
28 **the regular hourly rate or rates of pay, the overtime rate or rates of**
29 **pay, the number of regular hours worked and pay for those hours, and**
30 **the number of overtime hours worked and pay for those hours; and**

31 **(M) If the employee is paid a piece rate, the applicable piece rate**

1 **or rates of pay, the number of pieces completed at each piece rate and**
2 **the total pay for each rate.**

3 [(2)(a) *The itemized statement shall be provided to the employee at the time*
4 *payment of wages, salary or commission is made.*]

5 [(b)] **(2)(a)** The statement may be attached to or be a part of the check,
6 draft, voucher or other instrument by which payment is made, or may be
7 delivered separately from the instrument.

8 [(c)] **(b)** The statement shall be provided electronically at the time pay-
9 ment is made to all state officers and employees paid electronically under the
10 state payroll system as provided by ORS 292.026.

11 [(d)] **(c)** State agencies shall provide access to electronic statements to
12 employees who do not have regular access to computers in their workplace.

13 [(e)] **(d)** Notwithstanding paragraph [(c)] **(b)** of this subsection, if an of-
14 ficer or employee paid under the state payroll system as provided by ORS
15 292.026 wants to receive payment of net salary and wages by check or to
16 receive a paper statement of itemized payroll deductions, the officer or em-
17 ployee shall request paper statements or payment by check in accordance
18 with the procedures adopted by rule by the **Oregon Department of Admin-**
19 **istrative Services.**

20 (3) An employer may not withhold, deduct or divert any portion of an
21 employee's wages unless:

22 (a) The employer is required to do so by law;

23 (b) The deductions are **voluntarily** authorized in writing by the employee,
24 are for the employee's benefit and are recorded in the employer's books;

25 (c) The employee has voluntarily signed an authorization for a deduction
26 for any other item, provided that the ultimate recipient of the money with-
27 held is not the employer and that the deduction is recorded in the employer's
28 books;

29 (d) The deduction is authorized by a collective bargaining agreement to
30 which the employer is a party;

31 (e) The deduction is authorized under ORS 18.736; or

1 (f) The deduction is made from the payment of wages upon termination
2 of employment and is authorized pursuant to a written agreement between
3 the employee and employer for the repayment of a loan made to the employee
4 by the employer, if all of the following conditions are met:

5 (A) The employee has voluntarily signed the agreement;

6 (B) The loan was paid to the employee in cash or other medium permitted
7 by ORS 652.110;

8 (C) The loan was made solely for the employee's benefit and was not used,
9 either directly or indirectly, for any purpose required by the employer or
10 connected with the employee's employment with the employer;

11 (D) The amount of the deduction at termination of employment does not
12 exceed the amount permitted to be garnished under ORS 18.385; and

13 (E) The deduction is recorded in the employer's books.

14 (4) When an employer deducts an amount from an employee's wages as
15 required or authorized by law or agreement, the employer shall pay the
16 amount deducted to the appropriate recipient as required by the law or
17 agreement. The employer shall pay the amount deducted within the time re-
18 quired by the law or the agreement or, if the time for payment is not speci-
19 fied by the law or agreement, within seven days after the date the wages
20 from which the deductions are made are due. Failure to pay the amount as
21 required constitutes an unlawful deduction.

22 (5) This section does not:

23 (a) Prohibit the withholding of amounts authorized in writing by the
24 employee to be contributed by the employee to charitable organizations, in-
25 cluding contributions made pursuant to ORS 243.666 and 663.110;

26 (b) Prohibit deductions by checkoff dues to labor organizations or service
27 fees when the deductions are not otherwise prohibited by law; or

28 (c) Diminish or enlarge the right of any person to assert and enforce a
29 lawful setoff or counterclaim or to attach, take, reach or apply an employee's
30 compensation on due legal process.

31 **(6) An employer's failure to provide an itemized statement as re-**

1 **quired by subsection (1) of this section tolls the statute of limitations**
2 **for recovery of any wages or damages supported by that statement**
3 **until the statement has been provided to the employee.**

4 **SECTION 2.** ORS 652.750 is amended to read:

5 652.750. (1) As used in this section:

6 (a) “Employer” has the meaning given that term in ORS 656.005.

7 (b) “Personnel records” does not include records of an individual relating
8 to the conviction, arrest or investigation of conduct constituting a violation
9 of the criminal laws of this state or another state or the United States,
10 confidential reports from previous employers or records maintained in com-
11 pliance with ORS 352.226.

12 (c) “Public safety officer” has the meaning given that term in ORS
13 236.350.

14 (d) **“Time and pay records” means any documents that record the**
15 **times an employee started or stopped work, rest and meal periods re-**
16 **ceived or total hours worked, itemized statements required under ORS**
17 **652.610 and any other documents used to determine the gross or net**
18 **wages of an employee.**

19 (2) Except as provided in subsection (7) of this section, within 45 days
20 after receipt of an employee’s request, an employer shall provide reasonable
21 opportunity for the employee to inspect, at the place of employment or place
22 of work assignment, the personnel records of the employee that are used or
23 have been used to determine the employee’s qualification for employment,
24 promotion, additional compensation, [or] employment termination or other
25 disciplinary action **and time and pay records of the employee.** Within 45
26 days after receipt of the employee’s request, the employer shall furnish a
27 certified copy of the records.

28 (3) Upon termination of employment, the employer shall keep:

29 (a) The terminated employee’s personnel records for not less than 60 days.
30 [*Within the 60-day period, the employer shall provide the employee with a*
31 *certified copy of the records within 45 days of receiving the employee’s request.*

1 *After the 60-day period, the employer shall provide the certified copy within*
2 *45 days of receiving the employee's request if the employer has the records at*
3 *the time of the request.]*

4 **(b) The terminated employee's time and pay records for not less**
5 **than three years.**

6 (4) Notwithstanding the time periods described in [subsections] **sub-**
7 **section (2) [and (3)]** of this section, if the employee's personnel records **or**
8 **time and pay records** are not readily available, the employer and the em-
9 ployee may agree to extend the time within which the employer must provide
10 the employee reasonable opportunity to inspect the records or furnish the
11 employee a certified copy of the records.

12 (5) For the services referred to in [subsections] **subsection (2) [and (3)]**
13 of this section only, an employer may charge an employee no more than an
14 amount reasonably calculated to recover the actual cost of providing the
15 services.

16 (6)(a) Except as provided in paragraphs (b) and (c) of this subsection, an
17 employer may not place an adverse comment in the personnel records of a
18 public safety officer unless the officer has first read and signed the document
19 containing the adverse comment.

20 (b) If a public safety officer refuses to sign a document containing an
21 adverse comment, the employer may place the document in the officer's per-
22 sonnel records with a notation that the document was presented to the offi-
23 cer and the officer refused to sign it.

24 (c) If a public safety officer is not available to read and sign the document
25 containing an adverse comment at the work location where the personnel
26 files are maintained, the employer may place the document in the officer's
27 personnel records and mail a copy of the document to the officer by regular
28 mail or interoffice mail.

29 (d) A public safety officer may write a response within 30 days of being
30 presented with a document containing an adverse comment. If a public safety
31 officer writes a response to a document containing an adverse comment, the

1 response must be attached to the original document and placed in the
2 officer's personnel records.

3 (7)(a) Upon request, a public safety officer may inspect the officer's own
4 personnel records at a reasonable time at the location where the records are
5 kept by the employer.

6 (b) If, after inspection, a public safety officer believes that any portion
7 of the material is mistakenly or unlawfully placed in the officer's personnel
8 records, the officer may request in writing that the mistaken or unlawful
9 material be corrected or deleted. The request must describe the corrections
10 or deletions requested and the reasons supporting the request and provide
11 any documentation that supports the request. The employer shall respond
12 within 30 days from the date the request is received. If the employer does
13 not correct or delete the material, the employer shall place the request and
14 the employer's response to the request in the officer's personnel records.

15 **(8) In addition to any other remedy, an affected employee may bring**
16 **a private cause of action for violation of subsection (2) of this section.**

17 **(9) Upon finding a violation of subsection (2) of this section, the**
18 **court shall award the aggrieved person:**

19 **(a) Actual damages;**

20 **(b) Upon occurrence of the later of the day this section requires**
21 **compliance or the eighth day after the employee has mailed to the**
22 **employer a written demand for compliance that references this sec-**
23 **tion, statutory damages of \$50 per day for each day that the violation**
24 **continues, up to a maximum of \$5,000;**

25 **(c) Reasonable attorney fees and costs; and**

26 **(d) Other necessary or appropriate relief as determined by the**
27 **court, including but not limited to injunctive and declaratory relief.**

28 **(10) An employer's failure to provide records as required by this**
29 **section tolls the statute of limitations for recovery of any wages or**
30 **damages supported by those records until the records have been pro-**
31 **vided to the employee.**

1 **SECTION 3.** ORS 652.125 is amended to read:

2 652.125. (1) If, upon complaint by an employee, and after investigation, it
 3 appears to the Commissioner of the Bureau of Labor and Industries that an
 4 employer [*is failing to pay wages within five days of a payday scheduled by*
 5 *the employer,*] **has failed to establish or maintain a regular payday as**
 6 **required by ORS 652.120**, the commissioner may require the employer to
 7 [*give a bond in such amount as*] **provide a bond in an amount that** the
 8 commissioner determines necessary, with sufficient surety, to [*assure*] **ensure**
 9 timely payment of wages due employees for [*such*] **a future period [as] that**
 10 the commissioner considers appropriate. In lieu of a bond, the commissioner
 11 may accept a letter of credit from an issuer approved by the commissioner,
 12 upon [*such*] terms and conditions and for [*such*] **an amount [as] that** the
 13 commissioner determines necessary to [*assure*] **ensure** timely payment of
 14 wages for [*such*] **a future period [as] that** the commissioner determines ap-
 15 propriate.

16 (2) If[,] **an employer fails to provide the required bond** within 10 days
 17 after demand for [*such bond, the employer fails to provide the same, the com-*
 18 *missioner may commence court action against the employer in the circuit court*
 19 *of appropriate jurisdiction*] **the bond, the commissioner may commence**
 20 **an administrative action** to compel the employer to [*furnish such*] **provide**
 21 **the bond** or cease doing business until the employer has done so. The em-
 22 ployer shall have the burden of proving the amount [*thereof*] **of the required**
 23 **bond** to be excessive.

24 (3) If the [*court*] **commissioner** finds that there is just cause for requir-
 25 ing [*such*] **the bond** and that the [*same*] **bond** is reasonably necessary or
 26 appropriate to secure the prompt payment of the wages of the employees of
 27 [*such*] **the employer, the [court] commissioner** shall **issue an order subject**
 28 **to challenge or appeal under ORS chapter 183** to enjoin [*such*] **the em-**
 29 **ployer** from doing business in this state until the requirement is met, or shall
 30 make other, and may make further, **appealable** orders appropriate to compel
 31 compliance with the requirement.

1 (4) If an employer fails to comply with the requirements of this
 2 section, the commissioner may commence an action in the circuit
 3 court of appropriate jurisdiction to enforce the provisions of sub-
 4 section (3) of this section.

5 **SECTION 4.** ORS 652.340 is amended to read:

6 652.340. (1) If upon investigation by the Commissioner of the Bureau of
 7 Labor and Industries, after taking assignments of any wage claims under
 8 ORS 652.330, it appears to the commissioner that the employer is represent-
 9 ing to employees that the employer is able to pay wages for their services
 10 and that the employees are not being paid for their services, the commis-
 11 sioner may require the employer to give a bond in [*such sum as*] **an amount**
 12 **that** the commissioner deems reasonable and adequate in the circumstances,
 13 with sufficient surety, conditioned that the employer will for a [*definite fu-*
 14 *ture period not exceeding six months*] **future period that the commissioner**
 15 **considers appropriate** conduct business and pay employees in accordance
 16 with the laws of Oregon.

17 (2) If **an employer fails to provide the required bond** within 10 days
 18 after demand for [*such bond the employer fails to provide the same, the com-*
 19 *missioner may commence a suit against the employer in the circuit court of*
 20 *appropriate jurisdiction*] **the bond, the commissioner may commence an**
 21 **administrative action** to compel the employer to [*furnish such*] **provide the**
 22 bond or cease doing business until the employer has done so. The employer
 23 shall have the burden of proving the amount [*thereof*] **of the required bond**
 24 to be excessive.

25 (3) If the [*court*] **commissioner** finds that there is just cause for requir-
 26 ing [*such*] **the bond** and that the [*same*] **bond** is reasonably necessary or
 27 appropriate to secure the prompt payment of the wages of the employees of
 28 [*such*] **the employer** and the employer's compliance with ORS 652.310 to
 29 652.414, the [*court*] **commissioner** shall **issue an order subject to chal-**
 30 **lenge or appeal under ORS chapter 183 to** enjoin [*such*] **the employer** from
 31 doing business in this state until the requirement is met, or shall make

1 other, and may make further, **appealable** orders appropriate to compel com-
2 pliance with the requirement.

3 **(4) If an employer fails to comply with the requirements of this**
4 **section, the commissioner may commence an action in the circuit**
5 **court of appropriate jurisdiction to enforce the provisions of this sec-**
6 **tion.**

7 **SECTION 5.** ORS 652.409 is amended to read:

8 652.409. (1) The Wage Security Fund is established separate and distinct
9 from the General Fund. After deduction of the amounts provided in ORS
10 657.439 (2)(a), all moneys received by the Employment Department pursuant
11 to ORS 657.439 (2)(a) shall be paid into the State Treasury and credited to
12 the Wage Security Fund. All income earned on moneys in the Wage Security
13 Fund invested by the State Treasurer shall accrue to the fund.

14 (2) All income earned on moneys in the Wage Security Fund, and all other
15 moneys in the fund, are appropriated continuously to the Commissioner of
16 the Bureau of Labor and Industries to [*carry out the provisions of ORS*
17 *652.414*] **administer and enforce the provisions of ORS chapters 652 and**
18 **653.**

19 **SECTION 6.** (1) **A contractor or subcontractor, or an agent of a**
20 **contractor or subcontractor, may not intentionally:**

21 **(a) Fail to pay an employee of the contractor or subcontractor the**
22 **prevailing rate of wage as provided in ORS 279C.840;**

23 **(b) Reduce the rate of wage that an employee would ordinarily re-**
24 **ceive for work that is not subject to ORS 279C.800 to 279C.870 in order**
25 **to recoup wages the contractor, subcontractor or agent paid in ac-**
26 **cordance with ORS 279C.840;**

27 **(c) Withhold, deduct or divert any portion of an employee's wages**
28 **except as provided in ORS 652.610 (3);**

29 **(d) Enter into an agreement with an employee under the terms of**
30 **which the employee performs work on a public works project at less**
31 **than the prevailing rate of wage; or**

1 (e) Otherwise deprive an employee, permanently or indefinitely, of
2 wages due to an employee under ORS 279C.840 in an amount that
3 equals or exceeds the lessor of:

4 (A) \$1,000; or

5 (B) 25 percent of wages due to the employee under 279C.840.

6 (2) A violation of subsection (1) of this section is a Class C felony.

7 (3) In addition to and not in lieu of any action the Commissioner
8 of the Bureau of Labor and Industries may bring under ORS 279C.870,
9 the commissioner may:

10 (a) Refer a violation of subsection (1) of this section to a district
11 attorney or the Attorney General for prosecution; and

12 (b) Adopt rules necessary to implement the provisions of this sec-
13 tion.

14 SECTION 7. Section 6 of this 2016 Act is added to and made a part
15 of ORS 279C.800 to 279C.870.

16 SECTION 8. (1) Sections 6 and 7 of this 2016 Act and the amend-
17 ments to ORS 652.125, 652.340, 652.409, 652.610 and 652.750 by sections 1
18 to 5 of this 2016 Act become operative on January 1, 2017.

19 (2) The Commissioner of the Bureau of Labor and Industries may
20 adopt rules and take any other action before the operative date speci-
21 fied in subsection (1) of this section that is necessary to enable the
22 commissioner, on or after the operative date specified in subsection
23 (1) of this section, to exercise all of the duties, functions and powers
24 conferred on the commissioner by section 6 of this 2016 Act and the
25 amendments to ORS 652.125, 652.340, 652.409, 652.610 and 652.750 by
26 sections 1 to 5 of this 2016 Act.

27 SECTION 9. This 2016 Act being necessary for the immediate pres-
28 ervation of the public peace, health and safety, an emergency is de-
29 clared to exist, and this 2016 Act takes effect on its passage.