Chapter 658 — Employment Agencies; Farm Labor Contractors; Farmworker Camps

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EMPLOYMENT AGENCIES

658.005 Definitions for ORS 658.005 to 658.245. As used in ORS 658.005 to 658.245, unless the context requires otherwise:

(1) “Applicant for employment” or “applicant” means an individual who is seeking or who has obtained employment through the services of an employment agency.

(2) “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.

(3) “Employment agency” or “agency” means a business, service, bureau or club operated by a person, firm, organization, limited liability company or corporation engaged in procuring for a fee, employment for others and employees for employers.

(4) “Employment agency” or “agency” does not include:

(a) A nursing school, business school or career school that does not charge a fee for placement.

(b) Any business, person, service, bureau, organization or club that by advertisement or otherwise offers as its main object or purpose to counsel, teach or prepare individuals to obtain employment, and which charges for its services, whether in the form of dues, tuition, membership fees, registration fees or any other valuable service.

(c) Any business, service, bureau or club operated by a person, firm, organization, limited liability company or corporation engaged in procuring employment for others when the charges for services are paid, directly or indirectly, by anyone other than the applicant for employment.

(5) “Commissioner” means the Commissioner of the Bureau of Labor and Industries. [1953 c.694 §1; 1959 c.395 §15; 1961 c.380 §1; 1973 c.678 §1; 1981 c.318 §1; 1983 c.607 §1; 1987 c.306 §2; 1995 c.343 §54; 1997 c.55 §2]

658.008 Policy. The purpose of ORS 658.005 to 658.245 is to protect the health, safety and general welfare of the people of Oregon in their dealings with employment agencies. To accomplish this purpose the Legislative Assembly intends:

(1) To provide a procedure for determining where employment agencies will be operated in this state.

(2) To assure the public that persons operating employment agencies in this state are of good character and responsibility.

(3) To assure the public that the practices and procedures of employment agencies will result in individuals acquiring and retaining employment reasonably suited to their skills and needs.

(4) To regulate the circumstances under which charges for services may be charged or collected by employment agencies, but not to include the setting of maximum permanent fees in schedules published by employment agencies.

(5) To provide for the administration and enforcement of ORS 658.005 to 658.245 by the Commissioner of the Bureau of Labor and Industries. [1973 c.678 §24; 1981 c.318 §2; 1997 c.55 §3]

658.010 [Repealed by 1953 c.694 §30]

658.015 Exemptions from ORS 658.005 to 658.245. (1) ORS 658.005 to 658.245 do not apply to farm labor contractors subject to ORS 658.405 to 658.503.

(2) ORS 658.005 to 658.245 do not apply to any nonprofit organization or corporation organized for the purpose of economic adjustment, civic betterment and the giving of professional guidance and placement to its members, when all of the following requirements are met:

(a) None of its directors, officers or employees are deriving any profit beyond a nominal salary for services performed on its behalf.

(b) Membership dues and fees are used solely for the maintenance of the organization or corporation.

(c) No fee is charged for employment services.

(d) On request of the Commissioner of the Bureau of Labor and Industries, the organization or corporation files with the commissioner, on or before the first day of April of each year, a copy of its constitution or articles of incorporation and its bylaws, together with a sworn statement setting forth its place of business; the names and addresses of its officers, directors and employees, the salaries they receive and the services they actually perform; and the various benefits furnished to its members.

(3) As used in subsection (2) of this section:

(a) “Civic betterment” means the promotion of the common good and general welfare of the people of this state or any political subdivision therein.

(b) “Economic adjustment” means the promotion of a program by which individuals are helped to acquire new professional skills, add to their existing professional skills or change their type of profession.

(4) ORS 658.005 to 658.245 do not apply to a bona fide labor organization of workers or a nonprofit organization or corporation that has been formed in good faith for the regulation, promotion and advancement of the general professional interests of its members and that incidentally maintains a placement service principally engaged in securing employment for such members. [1953 c.694 §25; 1959 c.395 §16; 1961 c.380 §2; 1973 c.678 §2; 1979 c.224 §3; 1981 c.318 §3; 1987 c.306 §4; 1995 c.343 §55]

658.019 Rehabilitation service agency exemption. (1) ORS 658.005 to 658.245 does not apply to a rehabilitation services agency.

(2) As used in this section:

(a) A “rehabilitation services agency” means an individual, partnership or corporation that:

(A) Holds itself out to the public as such;

(B) Is certified by the Department of Consumer and Business Services to perform rehabilitation services pursuant to ORS chapter 656;

(C) Exclusively provides services to clients who are injured workers or physically or mentally disabled individuals; and

(D) Receives the major portion of the fee for services to the clients from a government agency, an insurer, self-insured employer or person other than the client.

(b) “Services to the client” may include, but are not limited to medical evaluation, physical rehabilitation, vocational rehabilitation, employment counseling, job analysis, job site modification, job placement, on-the-job training or other short term training program. [1983 c.475 §2; 1989 c.224 §124]

658.020 [Repealed by 1953 c.694 §30]

658.025 [1953 c.694 §2; 1961 c.380 §3; 1973 c.678 §3; 1981 c.318 §4; repealed by 1997 c.55 §1]

658.030 [Repealed by 1953 c.694 §30]

658.035 [1953 c.694 §3; 1961 c.380 §4; 1973 c.678 §4; 1981 c.318 §5; repealed by 1997 c.55 §1]

658.040 [Repealed by 1953 c.694 §30]

658.042 [1973 c.678 §5b; 1981 c.318 §6; repealed by 1997 c.55 §1]

658.045 [1953 c.694 §4; 1961 c.380 §5; repealed by 1973 c.678 §20]

658.050 [Repealed by 1953 c.694 §30]

658.055 [1953 c.694 §5; 1961 c.380 §6; 1973 c.678 §5; 1981 c.318 §7; repealed by 1997 c.55 §1]

658.060 [Repealed by 1953 c.694 §30]

658.062 [1973 c.678 §10b; repealed by 1997 c.55 §1]

658.065 Employment agency business not to be conducted in certain places. The business of an employment agency shall not be conducted or maintained in any of the following places:

(1) In rooms also used for living or sleeping quarters or in other rooms connected thereto by an entrance.

(2) In places where boarders or lodgers are kept.

(3) In places where meals are served.

(4) In places where intoxicating liquors are sold or consumed. [1953 c.694 §6; 1961 c.380 §7; 1973 c.678 §5c; 1981 c.318 §8; 1997 c.55 §4]

658.070 [Repealed by 1953 c.694 §30]

658.075 Agency to file security. (1) Each employment agency shall maintain a corporate surety bond or irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 of $5,000, payable to the people of the State of Oregon, conditioned that the employment agency will comply with ORS 658.005 to 658.245 and will pay:

(a) All sums legally owing to any person when the employment agency or its agents have received such sums;

(b) All damages occasioned to any person by reason of any willful misrepresentation, fraud, deceit or other unlawful act or omission by the employment agency, or its agents or employees acting within the scope of their employment; and

(c) All sums legally owing to any employee of the employment agency.

(2) For the purposes of this section, each general partner shall furnish the required bond or letter of credit. When an employment agency is operated by a limited liability company or corporation, the bond or letter of credit shall be in the name of the limited liability company or corporation. [1953 c.694 §7; 1961 c.380 §8; 1973 c.678 §6; 1981 c.318 §9; 1983 c.607 §2; 1987 c.306 §3; 1991 c.331 §101; 1997 c.55 §5; 1997 c.631 §519]

658.076 [1973 c.678 §10c; 1981 c.318 §10; 1991 c.331 §102; repealed by 1997 c.55 §1]

658.078 Agencies to keep records; inspection of records; furnishing copies to commissioner. (1) Each employment agency shall keep accurate and current records of all job orders, referrals, applications, advertisements and other records as determined by rule of the Commissioner of the Bureau of Labor and Industries to be reasonably necessary for the administration of ORS 658.005 to 658.245, and shall maintain those records separate from records of any other business conducted by the person, firm, organization, limited liability company or corporation operating the employment agency.

(2) Whenever a charge for services is to be collected or is attempted to be collected from an applicant for employment, the agency shall, in addition to those records required in subsection (1) of this section, keep accurate and current records of all contracts and receipts of moneys received from applicants.

(3) The commissioner or the commissioner's representative may during normal business hours inspect the records of the employment agency pertaining to placements, and need not give notice before such inspection. An employment agency shall furnish to the commissioner upon request a true copy of its records pertaining to placement, or any portion thereof, and shall make such reports relating to complaints of applicants for employment or employees as the commissioner requires. [1961 c.380 §20; 1973 c.678 §7; 1981 c.318 §11; 1987 c.306 §5; 1997 c.55 §6]

658.080 [Repealed by 1953 c.694 §30]

658.085 [1953 c.694 §8; 1957 c.465 §12; 1971 c.206 §1; 1973 c.678 §8; 1979 c.224 §1; 1981 c.318 §12; repealed by 1997 c.55 §1]

658.090 [Repealed by 1953 c.694 §30]

658.095 [1953 c.694 §9; 1961 c.380 §9; 1973 c.678 §9; 1985 c.394 §1; repealed by 1997 c.55 §1]

658.100 [Repealed by 1953 c.694 §30]

658.105 [1953 c.694 §10; 1961 c.380 §10; 1971 c.206 §2; 1973 c.678 §10; 1979 c.224 §2; 1981 c.318 §13; repealed by 1997 c.55 §1]

658.110 [Repealed by 1953 c.694 §30]

658.115 Civil penalty for violation of law or rules. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $2,000 against any person, firm, organization, limited liability company or corporation that has violated any provisions of ORS 658.005 to 658.245 or the rules adopted pursuant thereto.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(3) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [1961 c.380 §11; 1973 c.678 §11; 1975 c.144 §5; 1981 c.318 §14; 1997 c.55 §7]

658.120 [Repealed by 1953 c.694 §30]

658.125 Judicial review. A person aggrieved by an order of the Commissioner of the Bureau of Labor and Industries may obtain judicial review thereof in accordance with ORS 183.310 to 183.550. [1953 c.694 §12; 1961 c.380 §12; 1971 c.734 §101; 1981 c.318 §15; 1997 c.55 §8]

658.130 [Repealed by 1953 c.694 §30]

658.135 [1953 c.694 §13; 1981 c.318 §16; repealed by 1997 c.55 §1]

658.140 [Repealed by 1953 c.694 §30]

658.145 Publishing schedule of charges; effective date of schedule changes. (1) Every employment agency shall publish a schedule of charges for service to be collected in the conduct of its business. In the schedule, the various employments shall be classified according to the method of computing the agency's fee for services, and the maximum fee shall be fixed and shall include the charges for services of every kind rendered by the agency in each case or transaction on behalf of the prospective employer and a prospective employee.

(2) Changes in the schedule may be made by posting a copy of a revised schedule in a conspicuous place in the employment agency. However, no change shall become effective until seven days after being posted in the agency. [1953 c.694 §14; 1961 c.380 §13; 1973 c.678 §12; 1981 c.318 §17; 1997 c.55 §9]

658.150 [Repealed by 1953 c.694 §30]

658.155 Posting and furnishing schedule of charges; charge in excess of schedule prohibited. (1) A copy of the schedule of charges for service in effect with the changes noted thereon shall be kept posted in the employment agency in a conspicuous place. The posted schedule and the changes therein shall be in lettering or printing of not less than 12-point type. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies and kept posted in a conspicuous place in the offices of the employment agency.

(2) No charge for service to be collected shall be in excess of the schedule in the contract to procure employment between the agency and the applicant for employment.

(3) An employment agency shall provide any person who requests a copy of its schedule of charges for services with a copy of the schedule in effect at the time the request is made. [1953 c.694 §15; 1961 c.380 §14; 1971 c.235 §1; 1973 c.678 §13; 1981 c.318 §18; 1997 c.55 §10]

658.160 [Repealed by 1953 c.694 §30]

658.165 Order necessary before referral or charge to be made; obtaining employment other than that ordered; disputes regarding fees. (1) No employment agency shall accept a charge for service from an individual seeking employment or refer an individual to an employer without having first obtained, orally or in writing, a bona fide order from an employer seeking help which is to be answered by the individual.

(2) If an employment agency sends an applicant for employment and the applicant, within 90 days after the date of referral, secures employment other than that position specified in the bona fide order from the employer to which the applicant was sent, but with the same employer, the agency shall be entitled to a fee for the employment of the applicant, payable by the applicant, computed under the terms of the schedule of charges in effect in the agency at the time of referral. The expiration date of the referral shall be stated in the contract.

(3) In disputes between employment agencies concerning the earning of a fee for placement of an applicant, the fee shall be earned by the agency responsible for the applicant being placed. A reasonable effort shall be made by the billing agency to determine that it is entitled to the fee. The applicant shall be responsible for only one full fee for any single placement, and this fact shall be stated in the contract. [1953 c.694 §16; 1961 c.380 §15; 1973 c.678 §14]

658.168 Employment agency contracts to be written; required contract provisions; effect of noncompliance. (1) The contract between an employment agency and an applicant for whom such agency is to procure employment and from whom a charge for services is to be exacted or attempted to be collected shall be in writing. The agency shall give the applicant a copy of the contract.

(2) The contract between the employment agency and the applicant shall include:

(a) The name, address and telephone number of the employment agency.

(b) The name of the applicant.

(c) The date and consecutive number of the contract.

(d) A statement that the applicant is under no financial obligation to the employment agency by the mere signing of the contract, and that the applicant is obligated for the charge of services of the agency only if the applicant accepts and actually starts work in a position made available as a direct result of efforts of the agency, if the position is one on which the agency has a bona fide job order at the time of the applicant's referral to an employer or is a different position accepted by the applicant with the same employer within 90 days after the date of referral and involves skills the applicant had at the time of referral under a bona fide job order and if the charges for service are based upon the schedule of charges published by the agency pursuant to ORS 658.145.

(e) The schedule of charges published by the agency pursuant to ORS 658.145.

(f) Any other term, condition or understanding agreed upon between the agency and the applicant.

(g) At the bottom of the contract, a notice to the effect that the contract is the property of the applicant and shall not be taken from the applicant.

(3) Each contract shall be made in duplicate, both to be signed by the applicant and the person acting for the employment agency. One copy shall be given to the applicant and the other shall be kept on file at the agency.

(4) No fee or charge may be required or accepted from an applicant for employment when the employment agency fails to comply with the provisions of subsection (1) of this section. [1981 c.318 §21; 1997 c.55 §11]

658.170 [Repealed by 1953 c.694 §30]

658.172 Employment agency job referrals to be written if fee charged; required provisions; effect of noncompliance. (1) Any job referrals between an employment agency and an applicant for whom such agency is to procure employment and from whom a charge for services is to be exacted or attempted to be collected shall be in writing. The employment agency shall give the applicant a copy of the job referral document.

(2) The job referral document, which shall be assigned the same number as the receipt of the job order by the agency, 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, the name and address of the person to whom the applicant is sent for 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, if the applicant accepts employment, and a statement that the employer is not responsible for paying the fee.

(e) The kind of work or employment.

(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.

(3) The job referral document shall be signed by a representative of the employment agency, and shall be delivered to the applicant or sent by United States mail to the applicant.

(4) No fee or charge shall be required or accepted from an applicant for employment when the employment agency fails to comply with the provisions of subsection (3) of this section. [1971 c.235 §3; 1973 c.678 §15; 1981 c.318 §19; 1985 c.394 §2; 1997 c.55 §12]

658.174 Employment agency contracts in violation of law prohibited. No employment agency shall knowingly issue a contract for employment containing any term or condition that, if complied with, would be in violation of law, or attempt to fill an order for help to be employed in violation of law. [1973 c.678 §7b]

658.175 [Repealed by 1961 c.380 §16 (658.176 enacted in lieu of 658.175)]

658.176 Employment necessary before charge to be made. No fee or charge may be required or accepted from an individual seeking employment prior to the time such individual obtains employment and actually starts work. However, the employment agency may specify the terms of payment in the contract, or, after the applicant accepts employment, but before starting work, enter into an agreement for the payment of the agency's charge, providing payment is to commence only upon the condition and after the date the applicant starts work. [1961 c.380 §17 (enacted in lieu of 658.175); 1973 c.678 §16]

658.180 [Repealed by 1953 c.694 §30]

658.185 Limitation on charges; manner of calculating certain charges; credits and refunds. (1) As used in this section:

(a) "Permanent employment" means all employment that lasts 90 calendar days or more.

(b) "Temporary employment" means employment that is contemplated at the time of referral by an employment agency to last less than 90 calendar days regardless of the reason for termination of the employment.

(2)(a) If an individual is employed in temporary employment through the services of an employment agency, the charge for services paid by the individual shall not exceed one-ninetieth of the charge for permanent employment for each consecutive calendar day during the period the individual is employed or compensated as though employed.

(b) If an individual leaves employment within 90 days after the starting date of employment, the employment agency shall reduce the charge for services payable by the individual to that payable for temporary employment under paragraph (a) of this subsection and shall refund any charge paid in excess of that amount.

(c) Notwithstanding the other provisions of this section, in no instance in which the employment secured is subsequently terminated shall the charge for services by an employment agency be greater than the total gross earnings of the individual.

(d) 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 services shall be allowed as a credit against the charge. The provisions of this paragraph shall be stated in all contracts provided for in ORS 658.172.

(e) A refund when due shall be made within 10 days after request therefor by the individual. If the decision of the employment agency is not to make a refund, the agency shall notify the individual in writing, within such 10-day period, as to the specific reasons or circumstances for which the refund is not made. If the agency fails to properly notify the individual or fails to tender a refund within the 10-day period, the agency shall be liable to the individual in the amount of an additional sum equal to the amount of the refund.

(3)(a) If an individual secures employment in which the individual is to be paid on the basis of straight commissions, or a drawing account against commissions, or either a drawing account or salary plus commissions, the charge for services payable by the individual may be predicated upon the projected total gross earnings of the individual during the first year of employment as estimated by the employer and upon the employer demonstrating to the agency reasonable grounds therefor.

(b) Upon the conclusion of the individual's first six months and the conclusion of the individual's second six months of employment, a computation of the individual's actual total gross earnings may be provided by the individual to the agency, and, predicated upon appropriate proof of such earnings, an adjustment in the charge for services shall

be made by which either the agency shall refund to the individual any excess charge paid by the individual or the individual shall pay to the agency any deficiency thereon.

(c) If the individual's employment is terminated prior to the conclusion of the first 12 months of employment, the actual total gross earnings of the individual for the period of employment shall be projected to 12 months on a pro rata basis as though the individual had been employed for the entire period of 12 months, and a computation shall be made thereon. The charge for services paid or payable by the individual shall be predicated upon such computation as though the individual had been so employed. [1953 c.694 §18; 1961 c.380 §18; 1969 c.493 §97; 1973 c.678 §17; 1981 c.318 §22; 1997 c.55 §13]

658.195 Giving false information or making false representations; advertisements. (1) No employment agency shall knowingly publish or cause to be published any false, fraudulent or misleading information, representation, notice or advertisement.

(2)(a) All advertisements of an employment agency by means of cards, circulars or signs, and in newspapers and other publications, and all letterheads, receipts and blanks shall contain the name and address of the office of the employment agency.

(b) For the purposes of this subsection, it is sufficient compliance if the name actually used by the agency in its business is a registered assumed business name or the name of a bona fide corporation that clearly identifies the agency and the fact it is an employment agency.

(3) No employment agency shall knowingly give any false information or make any false promises or representations concerning an engagement or employment to any person who registers or applies for employment or help.

(4) 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 name or after its name. However, any employment agency that, as its sole means of procuring or attempting to procure employment or engagements for others, places the qualifications of applicants before prospective employers in areas exclusively outside the United States shall not be required to include the word "agency" or "agencies" in its title or in any other identifying materials used in the conduct of its business. [1953 c.694 §19; 1961 c.380 §21; 1973 c.678 §18; 1981 c.318 §23; 1987 c.306 §6; 1997 c.55 §14]

658.197 [1973 c.678 §25; 1981 c.318 §24; repealed by 1997 c.55 §1]

658.205 Prohibited agency employment activities. (1) No employment agency shall send or cause to be sent any person as an employee to any illegally operated business the character of which the agency could have ascertained upon reasonable inquiry.

(2) No employment agency shall knowingly permit any person of bad character to frequent, or be employed by, such agency.

(3) No employment agency shall permit persons in its employment to use any names other than their legal names in the course of, and in respect to, their employment with the agency. However, the Commissioner of the Bureau of Labor and Industries may, waive the provisions of this subsection in individual cases for good cause shown by the person requesting the waiver.

(4) No employment agency shall accept any application for employment of a minor or place or assist in placing any minor in employment if the employment would be in violation of any law regulating the employment of minors or of any rule, regulation or order adopted pursuant to such law.

(5) No employment agency shall refer an individual seeking employment to any place where a strike, lockout or other labor dispute exists if it has knowledge or reasonably should have knowledge of the same, without notifying the individual of such conditions in writing.

(6) No employment agency shall refer an applicant for employment without notifying such applicant whether a labor contract is in existence at the establishment to which the applicant is being sent, and whether union membership is required.

(7) No employment agency shall divide charges for services with an employer, agent or employee of an employer or person to whom individuals are referred for employment. This subsection does not prohibit cooperative arrangements between employment agencies so long as an applicant for employment does not thereby pay more than one charge for all services performed.

(8) No employment agency shall charge an applicant a charge for services for accepting employment with such employment agency or any subsidiary of that agency.

(9) No employment agency shall charge an applicant a charge for services when help is furnished to an employer, an agent, any employee of an employer, a member or person who has a financial interest in such employment agency.

(10) No employment agency shall request or accept an assignment of wages from an applicant for employment. [1953 c.694 §20; 1973 c.678 §19; 1981 c.318 §25]

658.210 Rulemaking authority. The Commissioner of the Bureau of Labor and Industries may adopt rules reasonably necessary for the administration of ORS 658.005 to 658.245. [1973 c.138 §3; 1981 c.318 §26]

Note: 658.210 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 658 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

658.215 [1953 c.694 §21; 1961 c.380 §22; repealed by 1973 c.678 §20 and by 1973 c.827 §83]

658.220 Injunctive relief for violation of ORS 658.005 to 658.245; commissioner authorized to issue subpoenas. (1) When it appears to the Commissioner of the Bureau of Labor and Industries that any person is engaged or about to engage in an act or practice that constitutes a violation of ORS 658.005 to 658.245 or the rules adopted pursuant thereto, the commissioner may, without bond, obtain an order from an appropriate circuit court enjoining any such act or practice. The court may award reasonable attorney fees to the commissioner if the commissioner prevails in an action under this subsection. The court may award reasonable attorney fees to a defendant who prevails in an action under this subsection if the court determines that the commissioner had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The commissioner may issue subpoenas in any investigation in a contested case the commissioner is conducting outside of a court proceeding or as otherwise necessary for the performance of any of the duties of the commissioner under ORS 658.005 to 658.245. [1973 c.678 §26; 1981 c.318 §27; 1981 c.897 §92; 1995 c.696 §44]

658.225 [1953 c.694 §22; 1961 c.380 §23; repealed by 1973 c.678 §20]

658.230 [1973 c.678 §22; 1981 c.318 §28; repealed by 1993 c.742 §2]

658.235 [1953 c.694 §23; 1961 c.380 §24; repealed by 1973 c.678 §20]

658.245 Actions upon agency bonds or letters of credit. Actions against any employment agency may be brought in the name of the person damaged upon one or more of the bonds or letters of credit maintained by the employment agency pursuant to ORS 658.075 and may be transferred and assigned as other claims for damages. The amount of damages claimed by the plaintiff determines the jurisdiction of the court in which action is to be brought. [1953 c.694 §24; 1961 c.380 §25; 1997 c.55 §15]

FARM LABOR CONTRACTORS

658.405 Definitions for ORS 658.405 to 658.503. As used in ORS 658.405 to 658.503 and 658.991 (2) and (3), unless the context requires otherwise:

(1) “Agricultural association” means a nonprofit or cooperative association of farmers, growers or ranchers that is incorporated under applicable state law and that acts as a farm labor contractor solely on behalf of members of the association.

(2) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

(3) “Crew leader” means the member of a group of workers who (a) acts as spokesman for the group, (b) travels with the group from another state into Oregon and (c) performs the same work along with other group members. A crew leader may transport workers from their local place of residence to their place of employment so long as the crew leader does not perform this service for a profit.

(4) “Farm labor contractor” means any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another to work in forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the

clearing, piling and disposal of brush and slash and other related activities or the production or harvesting of farm products; or who recruits, solicits, supplies or employs workers to gather evergreen boughs, yew bark, bear grass, salal or ferns from public lands for sale or market prior to processing or manufacture; or who recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities; or who, in connection with the recruitment or employment of workers to work in these activities, furnishes board or lodging for such workers; or who bids or submits prices on contract offers for those activities; or who enters into a subcontract with another for any of those activities. However, "farm labor contractor" does not include:

(a) Farmers, including owners or lessees of land intended to be used for the production of timber, their permanent employees, advertising media, platoon leaders or individuals engaged in the solicitation or recruitment of persons for dayhaul work in connection with the growing, production or harvesting of farm products;

(b) The Employment Department;

(c) A crew leader;

(d) An individual who performs work, other than recruiting, supplying, soliciting or employing workers to perform labor for another, alone or only with the assistance of the individual's spouse, son, daughter, brother, sister, mother or father;

(e) Individuals who perform labor pursuant to an agreement for exchanging their own labor or services with each other, provided the work is performed on land owned or leased by the individuals;

(f) An educational institution that is recognized as such by the Department of Education; or

(g) A farmer who operates a farmworker camp, regulated under ORS 658.750, who recruits, supplies, solicits or employs workers only for the farmer's own operations, and has farmworkers living in the camp who are employed by another on no more than an incidental basis, and the farmer receives no remuneration by virtue of such incidental employment. [1959 c.395 §1; 1961 c.390 §1; 1975 c.502 §1; 1981 c.606 §1; 1983 c.654 §3; 1985 c.314 §1; 1987 c.158 §128; 1991 c.848 §1; 1995 c.73 §1; 1999 c.628 §1]

658.407 Commissioner to administer and enforce ORS 658.405 to 658.503; rules. The Commissioner of the Bureau of Labor and Industries shall administer and enforce ORS 658.405 to 658.503, and in so doing shall:

(1) Investigate and attempt to adjust equitably controversies between farm labor contractors and their workers with respect to claims arising under ORS 658.415 (3) or 658.419.

(2) Take appropriate action to establish the liability or lack thereof of the farm labor contractor for wages of the employees of the farm labor contractor and if appropriate proof exists of liability for wages the commissioner shall pay the same or such part thereof as the commissioner has funds on deposit or cause the surety company to forthwith pay the entire liability or such part thereof as the sums due under the bond will permit.

(3) Adopt appropriate rules to administer ORS 658.405 to 658.503. [1971 c.479 §2; 1973 c.401 §1; 1975 c.502 §2; 1989 c.164 §10; 1991 c.331 §99; 1995 c.73 §6; 1999 c.628 §7]

658.410 Farm labor contractor license required; issuance. (1) Except as provided by ORS 658.425 and subsection (3) of this section, a person may not act as a farm labor contractor without a valid license in the person's possession issued to the person by the Commissioner of the Bureau of Labor and Industries. Except as provided in subsection (3) of this section, a person may not act as a farm labor contractor with regard to the forestation or reforestation of lands unless the person possesses a valid farm labor contractor's license with the indorsement required by ORS 658.417 (1). The Bureau of Labor and Industries shall make rules for the issuance of duplicate licenses in the event of the loss or destruction of original licenses.

(2) Farm labor contractor licenses may be issued by the commissioner only as follows:

(a) To a natural person operating as a sole proprietor under the person's own name or under an assumed business name registered with the Office of Secretary of State.

(b) To two or more natural persons operating as a partnership or as a limited liability partnership under their own names or under an assumed business name registered with the Office of Secretary of State.

(c) Except as provided in subsection (3) of this section, to the majority shareholder or majority shareholders of a corporation or a limited liability company that is licensed to operate as a farm labor contractor.

(d) Except as provided in subsection (3) of this section, to a corporation or a limited liability company whose majority shareholder or majority shareholders are also licensed to operate as a farm labor contractor and that is authorized to do business in Oregon by the Office of Secretary of State.

(e) To a cooperative corporation authorized to do business in Oregon by the Office of Secretary of State.

(f) To a private nonprofit corporation authorized to do business in Oregon by the Office of Secretary of State and

designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code, provided:

(A)(i) The purpose of the corporation is to provide education or training; and

(ii) Workers recruited, solicited, supplied or employed by the corporation are recruited, solicited, supplied or employed only for the purpose of educating or training the workers in the forestation or reforestation of lands or in the production or harvesting of farm products; or

(B) For at least five years before the corporation files an application for a farm labor contractor license, the corporation has been:

(i) Authorized to do business in Oregon by the Office of Secretary of State;

(ii) Primarily engaged in recruiting, soliciting, supplying or employing workers; and

(iii) Designated by the Internal Revenue Service as exempt under section 501(c)(3) of the Internal Revenue Code.

(g) To an agricultural association that is authorized to do business in Oregon by the Office of Secretary of State.

(3) The majority shareholder or majority shareholders of a corporation or limited liability company are not required to be licensed under this section if the corporation or limited liability company:

(a)(A) Publicly trades its shares of stock on a stock exchange regulated by the United States Securities and Exchange Commission; or

(B) Has 10 or more shareholders and demonstrates to the satisfaction of the commissioner that the corporation or limited liability company is adequately capitalized; and

(b) Is authorized to do business in Oregon by the Office of Secretary of State. [1959 c.395 §2; 1961 c.390 §2; 1983 c.476 §1; 1983 c.654 §4; 1989 c.164 §2; 1999 c.628 §2; 2001 c.178 §1]

658.411 Licensing by indorsement; terms and conditions. (1) The employee of a farm labor contractor who is licensed under ORS 658.405 to 658.503 may be licensed as a farm 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 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;

(e) The employer's license remains in good standing; and

(f) The employee meets all of the conditions for licensing as a farm labor contractor, except as provided in this section.

(2) A farm labor contractor subject to an employee indorsement acting in compliance with subsection (1) of this section need not provide proof of financial responsibility under ORS 658.415 (3).

(3) A farm labor contractor subject to an employee indorsement acting in compliance with subsection (1) of this section need not comply with ORS 658.417 (4).

(4) The license of a farm labor contractor subject to an employee indorsement shall state the conditions contained in subsection (1) of this section on its face, and shall state that a farm labor contractor subject to an employee indorsement who operates out of compliance with these restrictions is an unlicensed farm labor contractor.

(5) A farm labor contractor who employs another farm labor contractor is personally, jointly and severally liable for any damages, attorney fees or costs awarded against the employee for the actions of the farm labor contractor employee undertaken within the scope of employment, or for actions of the employee that the employee takes under color of an employee's license subject to an employee indorsement that are known, or reasonably should have been known, by the employer. In the case of a farm labor contractor that is a corporation, both the corporation and the licensed majority shareholder or shareholders are so liable. [1995 c.73 §3]

658.412 License examination. No license to operate as a farm labor contractor shall be issued until an applicant for a license has successfully passed a qualifying examination designed to test the applicant's ability, knowledge and proficiency to conduct and manage the business of a farm labor contractor. The Commissioner of the Bureau of Labor and Industries, by rule, shall prescribe the requirements for and the manner of testing the competency of license applicants. [1989 c.164 §3]

658.413 Fee schedule for licenses, indorsements and renewals; rules. (1) The Commissioner of the Bureau of

Labor and Industries shall establish by rule a fee schedule for issuing and renewing licenses and indorsements under ORS 658.405 to 658.503 and 658.705 to 658.850. The fees shall be in amounts reasonably necessary to provide sufficient funds to administer ORS 658.405 to 658.503 and 658.705 to 658.850. Fees may not exceed the following amounts:

(a) $100 for a farm labor contractor license.

(b) $100 for a farm labor contractor license with employee indorsement.

(c) $250 for a farm labor contractor license with forestation or reforestation indorsement.

(d) $250 for a farm labor contractor license with forestation or reforestation indorsement subject to ORS 658.418.

(e) $250 for a farm labor contractor license with employee and forestation or reforestation indorsements.

(f) $50 for a farmworker camp indorsement, paid in addition to one of the fees set out in paragraphs (a) to (e) of this subsection.

(2) An applicant for a license or indorsement, or for the renewal of a license or indorsement, shall pay the fee or fees established by the commissioner under subsection (1) of this section.

(3) Fees may not be refunded or prorated.

(4) All fees received pursuant to this section shall be credited to the Bureau of Labor and Industries Account and are continuously appropriated to the Bureau of Labor and Industries to be used only for the administration of ORS 658.405 to 658.503 and 658.705 to 658.850. [1999 c.399 §2]

658.415 Application for license; proof of insurance and financial responsibility; proceedings to collect wages owed by contractor; commissioner as agent for service of process; rules. (1) No person shall act as a farm labor contractor unless the person has first been licensed by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503. Any person may file an application for a license to act as a farm labor contractor at any office of the Bureau of Labor and Industries. The application shall be sworn to by the applicant and shall be written on a form prescribed by the commissioner. The form shall include, but not be limited to, questions asking:

(a) The applicant’s name, Oregon address and all other temporary and permanent addresses the applicant uses or knows will be used in the future.

(b) Information on all motor vehicles to be used by the applicant in operations as a farm labor contractor including license number and state of licensure, vehicle number and the name and address of vehicle owner for all vehicles used.

(c) Whether or not the applicant was ever denied a license under ORS 658.405 to 658.503 within the preceding three years, or in this or any other jurisdiction had such a license denied, revoked or suspended within the preceding three years.

(d) The names and addresses of all persons financially interested, whether as partners, shareholders, associates or profit-sharers, in the applicant’s proposed operations as a farm labor contractor, together with the amount of their respective interests, and whether or not, to the best of the applicant’s knowledge, any of these persons was ever denied a license under ORS 658.405 to 658.503 within the preceding three years, or had such a license denied, revoked or suspended within the preceding three years in this or any other jurisdiction.

(2) Each applicant shall furnish satisfactory proof with the application of the existence of a policy of insurance in an amount adequate under rules issued by the commissioner for vehicles to be used to transport workers. For the purpose of this subsection the certificate of an insurance agent licensed in Oregon is satisfactory evidence of adequate insurance.

(3) Each applicant shall submit with the application and shall continually maintain thereafter, until excused, proof of financial ability to promptly pay the wages of employees and other obligations specified in this section. The proof required in this subsection shall be in the form of a corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a deposit the equivalent of cash. For the purposes of this subsection it shall be deemed sufficient compliance if the farm labor contractor procures a savings account at a bank or savings and loan institution in the name of the commissioner as trustee for the employees of the farm labor contractor and others as their interests may appear and delivers the evidence of the account and the ability to withdraw the funds to the commissioner under the terms of a bond approved by the commissioner. The amount of the bond and the security behind the bond, or the cash deposit, shall be based on the maximum number of employees the contractor employs at any time during the year. The bond or cash 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 under ORS 658.416, if the contractor employs 21 or more employees.

(4) In the event that a single business entity licensed as a farm labor contractor has more than one natural person

who, as an owner or employee of the business entity, engages in activities that require the persons to be licensed individually as farm labor contractors, and each such person engages in such activities solely for that business entity, the commissioner may provide by rule for lower aggregate bonding requirements for the business entity and its owners and employees. If there is an unsatisfied final judgment of a court or decision of an administrative agency against a license applicant, the subject of which is any matter that would be covered by the bond or deposit referred to in subsection (3) of this section, the commissioner shall not issue a license to the applicant until the judgment or decision is satisfied. As a condition of licensing any such applicant, the commissioner may require the applicant to submit proof of financial ability required by subsection (3) of this section in an amount up to three times that ordinarily required of a license applicant.

(5) All corporate surety bonds filed under this section or ORS 658.419 shall be executed to cover liability for the period for which the license is issued. During the period for which it is executed, no bond may be canceled or otherwise terminated.

(6) Each application must be accompanied by the fee established under ORS 658.413.

(7) Any person who uses the services of a farm labor contractor who has failed to comply with any of the provisions of this section or ORS 658.419 shall:

(a) Be personally and jointly and severally liable to any employee so far as such employee has not been paid wages in full for the work done for that person.

(b) Be personally liable for all penalty wages that have occurred under ORS 652.150 for the wages due under this section.

(8) Any person who suffers any loss of wages from the employer of the person or any other loss specified in subsection (16) of this section shall have a right of action in the name of the person against the surety upon the bond or against the deposit with the commissioner. The right of action:

(a) Is assignable and must be included with an assignment of a wage claim, of any other appropriate claim, or of a judgment thereon.

(b) Shall not be included in any suit or action against the farm labor contractor but must be exercised independently after first procuring a judgment, decree, or other form of adequate proof of liability established by rule and procedure under subsection (14) of this section establishing the farm labor contractor’s liability for the claim.

(9) The surety company or the commissioner shall make prompt and periodic payments on the farm labor contractor’s liability up to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over advances made by the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber, for advances made to or on behalf of the farm labor contractor.

(b) Payment in full of all sums due to each person who presents adequate proof of the claim.

(c) If there are insufficient funds to pay in full the person next entitled to payment in full, such person shall be paid in part.

(10) A person may not bring any suit or action against the surety company or the commissioner on the bond or against the commissioner as the trustee for the beneficiaries of the farm labor contractor under any deposit made pursuant to this section or ORS 658.419 unless the person has first exhausted the procedures contained in subsections (8) and (12) of this section or in ORS 658.419 and contends that the surety company or the commissioner still has funds that are applicable to the person’s judgment or acknowledgment.

(11) The commissioner may not be prevented from accepting assignments of wage claims and enforcing liability against the surety on the bond or from applying the deposit to just wage claims filed with the commissioner.

(12) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been made by certified mail to the surety or the commissioner within six months from the end of the period for which the bond or deposit was executed and made.

(13) If the commissioner has received no notice as provided in subsection (12) of this section within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit under the control of the commissioner to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(14) The commissioner shall adopt rules reasonably necessary for administration and enforcement of the provisions of this section and ORS 658.419.

(15) Every farm labor contractor required by this section or ORS 658.419 to furnish a surety bond or make a deposit in lieu thereof shall keep conspicuously posted upon the premises where employees working under the

contractor are employed a notice, in both English and any other language used by the farm labor contractor to communicate with workers, specifying the contractor's compliance with the requirements of this section and ORS 658.419 and specifying the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner together with the address of the commissioner.

(16) The bond or deposit referred to in subsection (3) of this section shall be payable to the commissioner and shall be conditioned upon:

(a) Payment in full of all sums due on wage claims of employees.

(b) Payment by the farm labor contractor of all sums due to the grower or producer of agricultural commodities or the owner or lessee of land intended to be used for the production of timber for advances made to or on behalf of the farm labor contractor.

(17) No license shall be issued until the applicant executes a written statement that shall be subscribed and sworn to and that shall contain the following declaration:

_____

With regards to any action filed against me concerning my activities as a farm labor contractor, I appoint the Commissioner of the Bureau of Labor and Industries as my lawful agent to accept service of summons when I am not present in the jurisdiction in which such action is commenced or have in any other way become unavailable to accept service.

_____

(18) A person who cosigns with a farm labor contractor for a bond required by subsection (3) of this section or by ORS 658.419 is not personally or jointly and severally liable for unpaid wages above the amount of the bond solely because the person cosigned for the bond.

(19) The court may award reasonable attorney fees to the prevailing party in any action to enforce the provisions of this section or ORS 658.419. [1959 c.395 §§3, 4; 1961 c.390 §3; 1971 c.479 §3; 1973 c.401 §2; 1975 c.502 §3; 1979 c.883 §1; 1981 c.606 §2; 1981 c.897 §93; 1989 c.164 §11; 1989 c.930 §2; 1991 c.331 §100; 1993 c.723 §1; 1995 c.73 §2; 1995 c.618 §115; 1999 c.399 §3; 1999 c.628 §6]

658.416 Reduction of bond or deposit; conditions. If the Commissioner of the Bureau of Labor and Industries finds that an 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 that no valid claims for unpaid wages have been made against the applicant, then 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 in no event less than the following:

(1) If the commissioner finds that the contractor has so operated for a period of at least five years, $20,000;

(2) If the commissioner finds that the contractor has so operated for at least four years, $22,500;

(3) If the commissioner finds that the contractor has so operated for at least three years, $25,000; or

(4) If the commissioner finds that the contractor has so operated for at least two years, $27,500. [1995 c.73 §4]

658.417 Additional requirements for forestation activities. In addition to the regulation otherwise imposed upon farm labor contractors pursuant to ORS 658.405 to 658.503, a person who acts as a farm labor contractor with regard to the forestation or reforestation of lands shall:

(1) Obtain a special indorsement from the Commissioner of the Bureau of Labor and Industries on the license required by ORS 658.410 that authorizes the person to act as a farm labor contractor with regard to the forestation or reforestation of lands.

(2) Pay the fee established under ORS 658.413.

(3) Provide to the commissioner a certified true copy of all payroll records for work done as a farm labor contractor when the contractor pays employees directly. The records shall be submitted in such form and at such times and shall contain such information as the commissioner, by rule, may prescribe.

(4) Provide workers' compensation insurance for each individual who performs manual labor in forestation or reforestation activities regardless of the business form of the contractor and regardless of any contractual relationship that may be alleged to exist between the contractor and the workers notwithstanding any provision of ORS chapter 656, unless workers' compensation insurance is otherwise provided. [1983 c.654 §2; 1999 c.399 §4]

658.418 Exemption from requirements to submit proof of financial responsibility and certified payroll reports for contractors engaged in forestation. Upon written application from a farm labor contractor engaged in

forestation or reforestation of lands, the Commissioner of the Bureau of Labor and Industries may exempt the farm labor contractor from the provisions of ORS 658.415 (3) and 658.417 (3) for the license year if the commissioner finds that the farm labor contractor meets all of the following requirements:

(1) The farm labor contractor operates as a sole proprietor.

(2) The farm labor contractor engages in forestation or reforestation activities pursuant to contracts for less than $25,000.

(3) The farm labor contractor employs two or less individuals in the performance of work on all contracts performed in the license year. [1985 c.454 §2]

658.419 Proof of financial responsibility from agricultural associations and certain nonprofit corporations; right of action; manner of payment. (1) Notwithstanding the provisions of ORS 658.415 (3), (4), (8), (9) and (16), an agricultural association or a private nonprofit corporation described in ORS 658.410 (2)(f)(B) shall submit with the application for a license to act as a farm labor contractor and shall continually maintain thereafter, until excused, a corporate surety bond of a company licensed to do such business in Oregon, a cash deposit or a deposit the equivalent of cash, in a form approved by and payable to the Commissioner of the Bureau of Labor and Industries, in the amount of $30,000.

(2) Any person who suffers any loss of wages from the employer of the person or any other loss due to activities of the agricultural association or the private nonprofit corporation as a farm labor contractor shall have a right of action against the surety upon the bond or against the deposit with the commissioner. The right of action is assignable and may not be included in any action against the agricultural association or the private nonprofit corporation but shall be exercised independently after first procuring adequate proof of liability as provided by the commissioner by rule.

(3) The surety company or the commissioner shall make prompt and periodic payments on the agricultural association's or the private nonprofit corporation's liability up to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment based upon priority of wage claims over other liabilities;

(b) Payment in full of all sums due to each person who presents adequate proof of the claim; and

(c) If there are insufficient funds to pay in full the person next entitled to payment in full, payment in part to the person. [1999 c.628 §4; 2001 c.178 §2]

658.420 Investigation of applicant; issuance of license; protest against issuance of license. (1) The Commissioner of the Bureau of Labor and Industries shall conduct an investigation of each applicant's character, competence and reliability, and of any other matter relating to the manner and method by which the applicant proposes to conduct and has conducted operations as a farm labor contractor.

(2) The commissioner shall issue a license within 15 days after the day on which the application therefor was received in the office of the commissioner if the commissioner is satisfied as to the applicant's character, competence and reliability.

(3) Any individual may protest the issuance of a license to any applicant at any time, and the commissioner shall give the individual an opportunity to state the reasons for the objection. [1959 c.395 §5]

658.425 Temporary permit pending issuance of license; refusal to renew license considered revocation. (1) The office of the Bureau of Labor and Industries in which an application is filed shall issue to the applicant a temporary permit valid for not more than 60 days, if the following conditions are satisfied:

(a) The application is complete on its face.

(b) The applicant has furnished satisfactory evidence of adequate insurance under rules issued by the Commissioner of the Bureau of Labor and Industries.

(c) The applicant has paid in advance the fee established under ORS 658.413.

(d) The applicant or any person financially interested in the applicant's proposed operation as a farm labor contractor, whether as a partner, shareholder, associate, profitsharer or otherwise, has not been denied a license in a jurisdiction other than Oregon or under ORS 658.405 to 658.503 within the preceding three years, nor has had such a license revoked or suspended in Oregon or any other jurisdiction within the preceding three years, as appears of record with the commissioner.

(2) Any temporary permit expires immediately if the commissioner rejects the application of the person holding that permit.

(3) For the purposes of ORS 658.415 (1)(c) and (d) and subsection (1)(d) of this section, the refusal by the

commissioner to renew a license shall be considered as the revocation of that license on the date of its expiration. [1959 c.395 §6; 1961 c.390 §4; 1975 c.502 §4; 1983 c.654 §5; 1989 c.930 §1; 1999 c.399 §5]

658.430 Form of license. Each license shall bear on its face such information as is prescribed by rules of the Bureau of Labor and Industries, including but not limited to:

(1) The name and address of the licensee and a statement that the license is not valid after the expiration date.

(2) The number, date of issuance and expiration date of the license.

(3) A statement that the license shall not be transferred or assigned. [1959 c.395 §8]

658.435 Expiration and renewal of licenses. (1) Each license shall expire one year following the date of its issuance unless sooner revoked by the Commissioner of the Bureau of Labor and Industries.

(2) Applications for renewal of the license shall be made 30 days prior to the expiration date by payment of the fee established under ORS 658.413, but the commissioner may require any person seeking renewal to file a new application under ORS 658.415 (1) and (2) and may conduct a new investigation of the applicant's character, competence and reliability, and of any other matter relating to the manner by which the applicant proposes to conduct and has conducted operations as a farm labor contractor. [1959 c.395 §7; 1975 c.502 §5; 1985 c.252 §1; 1989 c.930 §3; 1999 c.399 §6]

658.437 Duties of farm labor contractor; duties of person to whom workers provided. (1) Prior to beginning work on any contract or other agreement the farm labor contractor shall:

(a) Display the license or temporary permit to the person to whom workers are to be provided, or the person's agent; and

(b) Provide the person to whom workers are to be provided, or the person's agent with a copy of the license or temporary permit.

(2) Prior to allowing work to begin on any contract or agreement with a farm labor contractor, the person to whom workers are to be provided, or the person's agent shall:

(a) Examine the license or temporary permit of the farm labor contractor; and

(b) Retain a copy of the license or temporary permit provided by the farm labor contractor pursuant to subsection (1)(b) of this section. [1989 c.164 §14]

658.440 Duties of farm labor contractors. (1) Each person acting as a farm labor contractor shall:

(a) Carry a labor contractor's license at all times and exhibit it upon request to any person with whom the contractor intends to deal in the capacity of a farm labor contractor.

(b) File immediately at the United States post office serving the labor contractor's address, as noted on the face of the license, a correct change of address if the contractor permanently changes address, and notify the Commissioner of the Bureau of Labor and Industries each time an address change is made.

(c) Pay or distribute promptly, when due, to the individuals entitled thereto all money or other things of value entrusted to the labor contractor by any person for that purpose.

(d) Comply with the terms and provisions of all legal and valid agreements or contracts entered into in the contractor's capacity as a farm labor contractor.

(e) File with the Bureau of Labor and Industries, as required by rule, information relating to work agreements between the farm labor contractor and farmers and between the farm labor contractor and workers or information concerning changes in the circumstances under which the license was issued.

(f) Furnish to each worker, at the time of hiring, recruiting, soliciting or supplying, whichever occurs first, a written statement in the English language and any other language used by the farm labor contractor to communicate with the workers that contains a description of:

(A) The method of computing the rate of compensation.

(B) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned.

(C) The terms and conditions of any loan made to the worker.

(D) The conditions of any housing, health and child care services to be provided.

(E) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.

(F) The terms and conditions under which the worker is furnished clothing or equipment.

(G) The name and address of the owner of all operations where the worker will be working as a result of being

recruited, solicited, supplied or employed by the farm labor contractor.

(H) The existence of a labor dispute at the worksite.

(I) The worker's rights and remedies under ORS chapters 654 and 656, ORS 658.405 to 658.503, the Service Contract Act (41 U.S.C. 351-401) and any other such law specified by the Commissioner of the Bureau of Labor and Industries, in plain and simple language in a form specified by the commissioner.

(g) At the time of hiring and prior to the worker performing any work for the farm labor contractor, execute a written agreement between the worker and the farm labor contractor containing the terms and conditions described in paragraph (f)(A) to (I) of this subsection. The written agreement shall be in the English language and any other language used by the farm labor contractor to communicate with the workers.

(h) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor, a written statement itemizing the total payment and amount and purpose of each deduction therefrom, hours worked and rate of pay or rate of pay and pieces done if the work is done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C. 351-401) or related federal or state law, a written statement of any applicable prevailing wage.

(2) If the farm labor contractor:

(a) Employs workers, the contractor shall substantially comply with the provisions of ORS 654.174 relating to field sanitation, and its implementing regulations as adopted by the Department of Consumer and Business Services.

(b) Owns or controls housing furnished to workers in connection with the recruitment or employment of workers, the contractor shall assure that the housing substantially complies with any applicable law relating to the health, safety or habitability of the housing.

(c) Recruits or solicits any worker to travel from one place to another for the purpose of working at a time prior to the availability of such employment, the contractor shall furnish to any such worker, at no charge, lodging and an adequate supply of food until employment begins, in compliance with rules adopted by the Bureau of Labor and Industries. If employment does not begin within 30 days from the date the farm labor contractor represented employment would become available, the contractor shall refund to any such worker all sums paid by the worker to the contractor and provide the worker, in cash or other form of payment authorized by ORS 652.110, the costs of transportation, including meals and lodging in transit, to return the worker to the place from which the worker was induced to travel or the costs of transportation, including meals and lodging in transit, to another worksite selected by the worker, whichever is less. For the purposes of this paragraph, "recruits or solicits" does not include the mere provision of housing or employment to persons who have not otherwise been recruited or solicited by the farm labor contractor or an agent of the farm labor contractor prior to their arrival at the place of housing or employment. Workers who arrive at the place of employment prior to the date they were instructed by the contractor to arrive are not entitled to the benefits of this subsection until the date they were instructed to arrive.

(3) No person acting as a farm labor contractor, or applying for a license to act as a farm labor contractor, shall:

(a) Make any misrepresentation, false statement or willful concealment in the application for a license.

(b) Willfully make or cause 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, condition or existence of employment at any place or by any person.

(c) Solicit or induce, or cause to be solicited or induced, the violation of an existing contract of employment.

(d) Knowingly employ an alien not legally present or legally employable in the United States.

(e) Assist an unlicensed person to act in violation of ORS 658.405 to 658.503.

(f) By force, intimidation or threat of procuring dismissal or deportation or by any other manner whatsoever, induce any worker employed or in a subcontracting relationship to the farm labor contractor to give up any part of the compensation to which the worker is entitled under the contract of employment or under federal or state wage laws.

(g) Solicit or induce, or cause 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 the work was represented as being available. [1959 c.395 §§9, 10; 1961 c.390 §5; 1971 c.479 §4; 1975 c.502 §6; 1981 c.606 §3; 1983 c.654 §6; 1989 c.164 §4]

658.445 Revocation, suspension or refusal to renew license. The Commissioner of the Bureau of Labor and Industries may revoke, suspend or refuse to renew a license to act as a labor contractor upon the commissioner's own motion or upon complaint by any individual, if:

(1) The licensee or agent has violated or failed to comply with any provision of ORS 658.405 to 658.503 and 658.991 (2) and (3); or

(2) The conditions under which the license was issued have changed or no longer exist; or

(3) The licensee's character, reliability or competence makes the licensee unfit to act as a farm labor contractor. [1959 c.395 §11]

658.450 Applicability of Administrative Procedures Act. (1) All proceedings relating to the issuance, revocation, suspension, renewal or refusal to renew a license to act as a farm labor contractor shall be conducted under ORS 183.310 to 183.550.

(2) All rules of the Bureau of Labor and Industries under ORS 658.405 to 658.503 shall be issued in compliance with ORS 183.310 to 183.550. [1959 c.395 §12]

658.452 Prohibitions relating to discharge of or discrimination against employee. No farm labor contractor or employer shall discharge or in any other manner discriminate against any employee because:

(1) The employee has made a claim against the farm labor contractor or employer for compensation for the employee's own personal services.

(2) The employee has caused to be instituted any proceedings under or related to ORS 658.405 to 658.503.

(3) The employee has testified or is about to testify in any such proceedings.

(4) The employee has discussed or consulted with anyone concerning the employee's rights under ORS 658.405 to 658.503. [1975 c.397 §4; 1981 c.606 §4]

658.453 Civil penalty; disposition of funds; civil action by worker. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $2,000 for each violation by:

(a) A farm labor contractor who, without the license required by ORS 658.405 to 658.503, recruits, solicits, supplies or employs a worker.

(b) A farm labor contractor who fails to comply with ORS 658.415 (15).

(c) A farm labor contractor who fails to comply with ORS 658.440 (1), (2)(c) or (3).

(d) Any person who violates ORS 658.452.

(e) A farm labor contractor who fails to comply with ORS 658.417 (1), (3) or (4).

(f) Any person who uses an unlicensed farm labor contractor without complying with ORS 658.437.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(3) All penalties recovered under this section shall be paid into the State Treasury and credited to the Farmworker Housing Development Account of the Oregon Housing Fund.

(4) After filing a complaint with the Commissioner of the Bureau of Labor and Industries, in addition to any other penalty provided by law, a worker has a right of action against a farm labor contractor who violates subsection (1)(c), (d) or (e) of this section or ORS 658.440 (2)(a) or (b) without exhausting any alternative administrative remedies. The action may not be commenced later than two years after the date of the violation giving rise to the right of action. The amount of damages recoverable for each violation under this subsection is actual damages or $1,000, whichever amount is greater. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal. [1979 c.883 §3; 1981 c.606 §5; 1981 c.897 §94; 1983 c.654 §7; 1989 c.164 §5; 1989 c.706 §21; 1991 c.734 §61; 1991 c.907 §3; 2001 c.310 §5]

658.455 Disposition of moneys received. Except as provided in ORS 658.453 (3) and 658.815, and except for money received under a bond or deposit as provided in ORS 658.415 (3), 658.419 or 658.735 (1), all fees and other money received by the Commissioner of the Bureau of Labor and Industries under ORS 658.405 to 658.503 and 658.715 to 658.850 shall be credited and used as provided in ORS 658.413. [1959 c.395 §13; 1973 c.401 §3; 1975 c.502 §7; 1991 c.489 §1; 1999 c.399 §7; 1999 c.628 §9]

658.465 Liability of person using services of unlicensed farm labor contractor; issuance of bond to unlicensed farm labor contractor prohibited. (1) Any person who knowingly uses the services of an unlicensed farm labor contractor shall be personally, jointly and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in ORS 658.453 (4).

(2) No surety insurer shall provide any bond, undertaking, recognizance or other obligation for the purpose of securing or guaranteeing any act, duty or obligation, or the refraining from any act with respect to a contract using the services of a farm labor contractor unless the farm labor contractor has a valid license issued pursuant to ORS 658.405

to 658.503 at the time of issuance of the bond, undertaking, recognizance or other obligation. [1981 c.607 §2; 1983 c.654 §8]

658.467 Liability of member of agricultural association. A member of any agricultural association that is required to be licensed under ORS 658.410 shall be jointly and severally liable for any damages, attorney fees or costs awarded to any person for actions taken by the association in its capacity as a farm labor contractor if such actions were requested, authorized, approved or ratified by the member. [1999 c.628 §5]

658.475 Injunctive relief and damages for violation of ORS 658.405 to 658.503. The Commissioner of the Bureau of Labor and Industries, or any other person, may bring suit in any court of competent jurisdiction to enjoin any person from using the services of an unlicensed farm labor contractor or to enjoin any person acting as a farm labor contractor in violation of ORS 658.405 to 658.503, or rules promulgated pursuant thereto, from committing future violations. The court may award to the prevailing party costs and disbursements and a reasonable attorney fee. In addition, the amount of damages recoverable from a person acting as a farm labor contractor with regard to the forestation or reforestation of lands who violates ORS 658.410, 658.417 (3) or (4) or 658.440 (3)(e) is actual damages or $500, whichever amount is greater. [1981 c.607 §3; 1983 c.654 §9; 1989 c.164 §13]

658.480 Authority of commissioner to enter reciprocal agreements. The Commissioner of the Bureau of Labor and Industries may enter into an agreement with an agency of another state for the reciprocal enforcement of statutes regulating farm labor contractors, if the other state has a reciprocal statute similar to this section or otherwise authorizes the reciprocal enforcement of statutes regulating farm labor contractors in a manner substantially similar to ORS 658.405 to 658.503. [1985 c.252 §3]

658.485 Transfer of funds collected under reciprocal agreements; restriction on use of funds. Any agreement concluded by the Commissioner of the Bureau of Labor and Industries under ORS 658.480 shall make a provision for the transfer of any funds collected pursuant to ORS 658.480 and for retention by the commissioner or the agency of the other state of percentile amounts from sums collected to defray the administrative costs of ORS 658.480. Amounts retained pursuant to this section to be used to defray the administrative costs of ORS 658.480 shall be credited to the Bureau of Labor and Industries Account and shall be used only for the administration of ORS 658.480. [1985 c.252 §4]

658.487 Certain agreements void. Agreements by employees purporting to waive or to modify their rights under this chapter are void as contrary to public policy. [1989 c.164 §7]

658.489 Failure or refusal of contractor to pay claim; worker claim to Bureau of Labor and Industries. (1) If a person acting as a farm labor contractor fails, neglects or refuses to make prompt payment of a claim for labor or services furnished by a person in connection with a contract or agreement as such claim becomes due, the person with whom the contractor has made the contract or agreement may pay such claim to the person furnishing the labor or services or, upon demand, may pay such claim to the Bureau of Labor and Industries for the benefit of persons furnishing labor and charge the amount of the payment against funds due or to become due the contractor by reason of such contract or agreement.

(2) The payment of a claim in the manner authorized in this section shall not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims. [1989 c.164 §8]

658.501 Application of certain provisions. ORS 658.405 to 658.503 apply to all transactions, acts and omissions of farm labor contractors and users of farm labor contractors that are within the constitutional power of the state to regulate, and not preempted by federal law, including but not limited to the recruitment of workers in this state to perform work outside this state, the recruitment of workers outside of this state to perform work in whole or in part within this state, the housing of workers in this state for work in another state, the housing of workers from another state in connection with work to be performed in this state, the transportation of workers through this state and the payment, terms and conditions, disclosure and record keeping required with respect to work performed outside this state by workers recruited in this state. [1989 c.164 §9]

658.503 Service of process when contractor unavailable. In any action arising out of the activities of an

unlicensed farm labor contractor within this state who is not in the state or is otherwise unavailable for service of process in this state, the unlicensed farm labor contractor may be served by mailing a certified true copy of the summons and complaint to:

(1) The Commissioner of the Bureau of Labor and Industries;

(2) The last-known address, if any, of the unlicensed farm labor contractor; and

(3) Any other address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice. [1989 c.164 §12]

658.505 [1965 c.612 §1; 1991 c.67 §163; repealed by 1991 c.927 §9]

658.515 [1965 c.612 §2; repealed by 1991 c.927 §9]

658.525 [1965 c.612 §3; 1971 c.430 §1; 1991 c. 67 §164; repealed by 1991 c.927 §9]

658.535 [1965 c.612 §4; repealed by 1991 c.927 §9]

658.545 [1965 c.612 §5; repealed by 1991 c.927 §9]

658.555 [1965 c.612 §6; 1991 c.67 §165; repealed by 1991 c.927 §9]

658.600 [1987 c.643 §1; renumbered 285.180 in 1991]

658.610 [1987 c.643 §2; renumbered 285.183 in 1991]

658.620 [1987 c.643 §3; renumbered 285.185 (5) in 1991]

658.630 [Formerly 190.900; renumbered 285.187 in 1991]

FARMWORKER CAMPS

(Pilot Program for Utility Connections in Jackson County)

Note: Sections 1 to 3, chapter 210, Oregon Laws 1995, provide:

Sec. 1. The Legislative Assembly finds that:

(1) Adequate farmworker camp housing is vital to both farmworkers and agricultural producers.

(2) There is a shortage of adequate farmworker camp housing in Oregon, particularly in less populous counties with fewer resources.

(3) Sewerage disposal and quality of water supplies limit improvement and development of farmworker camp housing.

(4) A pilot program would demonstrate the feasibility of using certain methods to improve the quality of farmworker camp housing. [1995 c.210 §1]

Sec. 2. (1) At the request of a property owner and on payment of required fees and charges, a local government or special district shall provide a hookup to water or sewerage service to a farmworker camp in Jackson County if:

(a) The existing service is contiguous to the site to be served;

(b) The level of service is limited to the needs of the farmworker camp; and

(c) Intervening hookups are not allowed.

(2) A local government or special district shall have discretion to not extend water or sewerage service to a farmworker camp under subsection (1) of this section, if the local government or special district has a general moratorium on additional hookups.

(3) Conversion of the farmworker camp to a dwelling not in conjunction with a farm use is prohibited, unless the land is inside an urban growth boundary.

(4) As used in this section, “farmworker camp” has the meaning given that term in ORS 658.705. [1995 c.210 §2]

Sec. 3. Sections 1 and 2, chapter 210, Oregon Laws 1995, are repealed on December 31, 2003. [1995 c.210 §3; 1999 c.388 §1]

(General Provisions)

658.705 Definitions for ORS 658.705 to 658.850. As used in ORS 658.705 to 658.850:

(1) “Applicant” means an individual who proposes to operate a farmworker camp and who is applying for a camp operator indorsement under ORS 658.730.

(2) “Bureau” means the Bureau of Labor and Industries.

(3) “Commissioner” means the Commissioner of the Bureau of Labor and Industries.

(4) “Department” means the Department of Consumer and Business Services.

(5) “Director” means the Director of the Department of Consumer and Business Services.

(6) “Farm labor contractor” has the same meaning as that provided in ORS 658.405.

(7) “Farmworker camp” means any place or area of land where sleeping places, manufactured structures 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. “Farmworker 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) “Farmworker camp operator” means any person who operates a farmworker camp.

(9) “Indorsee” means a farm labor contractor licensed under ORS 658.410 who has obtained a camp indorsement under ORS 658.730. [1989 c.962 §2; 1993 c.18 §143; 1993 c.744 §19]

658.715 Farmworker camp operator requirements. (1) No person shall operate a farmworker camp unless:

(a) The person is a farm labor contractor licensed under ORS 658.405 to 658.503, and the contractor first obtains an indorsement to do so as provided in ORS 658.730; or

(b) The person:

(A) Has a substantial ownership interest in the real property, subject to farm use special assessment under ORS 308A.050 to 308A.128, on which the camp is located or has any form of ownership interest in a business organization that operates the farmworker camp and files a schedule F as part of an income tax return in the preceding tax year; or

(B) Is related by blood or marriage to any person who has a substantial ownership interest in the real property, subject to farm use special assessment under ORS 308A.050 to 308A.128, on which the camp is located or has any form of ownership interest in the business organization that operates the farmworker camp and files a schedule F as part of an income tax return in the preceding tax year.

(2) Nothing in ORS 658.705 to 658.850 requires a permanent employee of a farmworker camp operator, who has no financial interest in the camp other than the wages paid to the employee, to obtain a camp indorsement. [1989 c.962 §3; 1991 c.67 §166; 1995 c.79 §335; 1999 c.314 §57]

658.717 Notice of farmworker camp operations. Every farmworker camp operator shall:

(1) Post an informational notice, on a form provided by the Department of Consumer and Business Services as set forth in subsection (2) of this section, in an area of the farmworker camp frequented by the occupants.

(2) The notice provided by the department under subsection (1) of this section shall be published in English and in the language or languages used to communicate with the occupants of the farmworker camp and shall contain the following information:

(a) The name and address of the operator.

(b) The address and phone number of the department.

(c) A statement that inquiries regarding health and sanitation matters or the terms and conditions of occupancy may be made to the department.

(d) A statement that the farmworker camp is registered with the department. [1995 c.500 §3]

658.720 Certain agreements void. Agreements by workers purporting to modify their rights under ORS 658.705 to 658.850 shall be void as contrary to public policy. [1989 c.962 §11; 1991 c.67 §167]

(Farm Labor Contractor Indorsement)

658.730 Farm labor contractor indorsement to operate farmworker camp; posting indorsement; rules. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Commissioner of the Bureau of Labor and Industries, by rule, shall establish an indorsement system for any farm labor contractor who operates a farmworker camp. Such system shall include, but not be limited to, provisions prescribing:

(a) The form and content of and the times and procedures for submitting an application for indorsement issuance or renewal.

(b) The requirements for and the manner of testing the competency of indorsement applicants.

(2) The indorsement shall be posted conspicuously in an exterior area of the camp that is open to all employees and in a manner easily visible to the occupants of and visitors to the camp. [1989 c.962 §4]

658.735 Bond required; claim on bond; procedures. (1) Each applicant shall submit with the application and shall continually maintain thereafter a bond approved by the Commissioner of the Bureau of Labor and Industries. The amount of the bond and the security behind the bond shall be $15,000 or the amount specified in ORS 658.415, whichever is greater. This bond shall satisfy the bond required by ORS 658.415. If there is an unsatisfied final judgment of a court or decision of an administrative agency against an indorsee applicant, the subject of which is any matter which would be covered by the bond referred to in this subsection, the commissioner shall not issue an indorsement to the applicant until the judgment or decision is satisfied. As a condition of indorsement, the commissioner may require the applicant to submit proof of financial ability required by this subsection in an amount up to three times that ordinarily required of an indorsee applicant. In lieu of the bond required by this subsection, each applicant may file with the commissioner, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the commissioner.

(2) All bonds or deposits filed under this section shall be executed to cover liability for the period for which the indorsement is issued. During the period for which executed, no bond can be canceled or otherwise terminated.

(3) Any person who suffers any loss specified in subsection (9) of this section shall have a right of action in the name of the person against the surety upon the bond or against the deposit with the commissioner:

(a) The right of action is assignable and must be included with the claim, or of a judgment thereon.

(b) The right of action shall not be included in any suit or action against the farmworker camp operator but must be exercised independently after first procuring a judgment, decree or other form of adequate proof of liability established by rule establishing the farmworker camp operator’s liability for the claim.

(4) The surety company or the commissioner shall make prompt and periodic payments on the farmworker camp operator’s liability up to the extent of the total sum of the bond or deposit. Payments shall be made in the following manner:

(a) Payment shall be made based upon priority of wage claims over any other claims.

(b) Payment shall be made in full of all sums due to each person who presents adequate proof of the claim.

(c) If there are insufficient funds to pay in full the person next entitled to payment in full, such person will be paid in part.

(5) No person shall bring any suit or action against the surety company or the commissioner on the bonding obligation or as trustee for the beneficiaries of the indorsee under any deposit made pursuant to this section unless the person has first exhausted the procedures contained in subsections (3) and (6) of this section and contends that the surety company or the commissioner still has funds which are applicable to the person’s judgment or acknowledgment.

(6) All claims against the bond or deposit shall be unenforceable unless request for payment of a judgment or other form of adequate proof of liability or a notice of the claim has been made by certified mail to the surety company or the commissioner within six months from the end of the period for which the bond or deposit was executed and made.

(7) If the commissioner has received no notice as provided in subsection (6) of this section within six months after a farm labor contractor is no longer required to provide and maintain a surety bond or deposit, the commissioner shall terminate and surrender any bond or any deposit under the control of the commissioner to the person who is entitled thereto upon receiving appropriate proof of such entitlement.

(8) Every indorsee required by this section 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 employees and in a manner easily visible to occupants of and visitors to the camp, a notice in both English and any other language used by the indorsee to communicate with workers specifying the indorsee’s compliance with the requirements of this section and specifying the name and Oregon address of the surety on the bond or a notice that a deposit in lieu of the bond has been made with the commissioner, together with the address of the commissioner.

(9) The bond or deposit referred to in subsection (1) of this section shall be payable to the commissioner and 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. [1989 c.962 §5; 1993 c.723 §2]

658.740 Revocation, suspension, refusal to issue or renew indorsement. The Commissioner of the Bureau of Labor and Industries may revoke, suspend, refuse to renew or refuse to issue an indorsement to act as a farmworker camp operator upon the commissioner's own motion or upon complaint by an individual if the:

(1) Indorsee has violated or failed to comply with any provision of ORS 658.715 to 658.850 or any of the rules adopted thereunder;

(2) Conditions under which the indorsement was issued have changed or no longer exist;

(3) Indorsee's character, reliability or competence makes the indorsee unfit to act as a farmworker camp operator; or

(4) Applicant or operator makes any material misrepresentation, false statement or willful concealment in the application for a license. [1989 c.962 §9]

(Operation of Farmworker Camps)

658.750 Camp operator registration; procedures. (1) Every farmworker camp operator shall register with the Department of Consumer and Business Services each farmworker camp operated by the operator.

(2) The department shall establish, by rule, procedures for annual registration of farmworker camps. The department may adopt any other rule necessary to implement the provisions of ORS 658.705 to 658.850.

(3) Upon receipt of an initial application for registration, the department shall conduct a preoccupancy consultation with the operator of the farmworker camp if:

(a) The camp was not registered with the department prior to January 1, 1989, and has not been registered with the Commissioner of the Bureau of Labor and Industries or the Director of the Department of Consumer and Business Services in a prior year; or

(b) The camp operator requests a consultation.

(4) If the department has determined that the health and safety conditions existing at the camp are not in conformance with the rules of the department, the department shall not register the camp until the department determines that the camp has been brought into compliance.

(5) Upon registration of a camp, the department shall transmit a copy of the registration to the Bureau of Labor and Industries.

(6) The department shall compile periodically a list of all registered camps and make the list available to the bureau and other interested persons. [1989 c.962 §6; 1991 c.67 §168; 1995 c.500 §1]

658.755 Farmworker camp operator duties; prohibitions. (1) Every farmworker camp operator shall:

(a) If a farm labor contractor, comply with the provisions of ORS 658.405 to 658.503.

(b) Comply with ORS chapter 654 and the administrative rules of the Department of Consumer and Business Services adopted pursuant to ORS chapter 654.

(c) Comply with all applicable building codes and health and safety laws.

(d) Comply with ORS 659A.250 to 659A.262.

(e) Pay or distribute promptly, when due, to individuals entitled thereto, all moneys or other things of value entrusted to the farmworker camp operator, or agents or employees of the operator, by any individual for that purpose.

(f) Comply with the terms and provisions of all legal and valid agreements or contracts entered into in the operator's capacity as an operator of a farmworker camp.

(2) No farmworker camp operator shall:

(a) Operate a camp which is not registered with the department as required by ORS 658.750.

(b) Make any material misrepresentation, false statement or willful concealment in the application for an indorsement or registration.

(c) Willfully make or cause to be made to any person any false, fraudulent or misleading representation concerning

the terms and conditions of occupancy in the farmworker camp.

(d) Knowingly publish or circulate any false or misleading information concerning the terms, conditions or existence of housing or employment at any place.

(e) Assist a person who is not entitled to operate a farmworker camp under ORS 658.705 to 658.850 to act in violation of ORS 658.705 to 658.850 or in violation of ORS 658.405 to 658.503 or ORS chapter 654.

(f) By force, intimidation or threat in any manner whatsoever, induce any occupant of the farmworker 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.

(g) By force, intimidation or threat in any manner whatsoever, restrain any person who wishes to leave the camp from doing so. [1989 c.962 §7; 1991 c.67 §169; 1995 c.500 §4]

658.760 Prohibited actions by operator; burden of proof. (1) No farmworker camp operator shall discharge, evict or in any other manner discriminate against any person because that person:

(a) Has made a claim against the operator or employer for compensation for the occupant's own personal services.

(b) Has caused to be instituted any proceedings under or related to ORS 658.705 to 658.850.

(c) Has testified or is about to testify in any such proceedings.

(d) Has discussed or consulted with anyone concerning the occupant's rights under ORS 658.405 to 658.503 or 658.705 to 658.850.

(2) The aggrieved person shall have the burden of proving that the discrimination was because of the protected activity. [1989 c.962 §8; 1991 c.67 §170]

658.780 Protest of registration. Any individual may protest the registration of any proposed farmworker camp and the Department of Consumer and Business Services shall give the individual an opportunity to state the reasons for the objection. [1989 c.962 §14; 1995 c.500 §5]

658.785 Revocation or suspension of registration. The Department of Consumer and Business Services may revoke or suspend a registration upon the department's own motion or upon complaint by an aggrieved individual if the:

(1) Camp is no longer in compliance with the provisions of ORS 658.715 to 658.850 or any rules adopted thereunder;

(2) Conditions under which the registration was accepted have changed or no longer exist;

(3) Information supplied by the operator or applicant regarding the farmworker camp included any material misrepresentation, false statement or willful concealment in the registration or in any procedure in the application process; or

(4) The department finds that the camp fails to comply with the requirements of ORS chapter 654 and the regulations adopted thereunder. [1989 c.962 §15; 1995 c.500 §6]

658.790 Vacation of camp; substitute lodging; standards. (1) If any government agency authorized to enforce building, health or safety standards orders a camp vacated because the camp is not habitable, the camp operator shall provide lodging, without charge, that meets the health and safety standards of the Department of Consumer and Business Services, for seven days or until the camp is made habitable, whichever is less.

(2) The provisions of subsection (1) of this section do not apply if the department determines that the cause of closure was beyond the control of the camp operator.

(3) In addition to other remedies provided by law, the department shall enforce the provisions of subsection (1) of this section. [1989 c.962 §17; 1997 c.27 §1]

658.805 Denial of right to court action in certain cases; injunction; attorney fees. (1) Except to appeal from an act or determination of the Commissioner of the Bureau of Labor and Industries or the Department of Consumer and Business Services, no person operating a farmworker camp, as defined in ORS 658.705, is entitled to demand, receive or accept any fee directly or indirectly or maintain any suit or action in the courts of this state involving the farmworker camp, without alleging and proving that the person was registered or indorsed to operate a farmworker camp.

(2) The commissioner, Director of the Department of Consumer and Business Services or any local governmental agency may bring suit in any court of competent jurisdiction to enjoin any person from violating any of the provisions of ORS 658.705 to 658.850, or rules adopted pursuant thereto, and from committing future violations.

(3) Any aggrieved person may bring suit in any court of competent jurisdiction to enjoin any person violating ORS 658.715 (1) or 658.755 (2)(a) from violating any of the provisions of ORS 658.705 to 658.850, or rules adopted pursuant thereto, and from committing future violations.

(4) In actions brought pursuant to this section, the court may award to the prevailing party costs and disbursements and a reasonable attorney fee. In addition, if damages are found, the amount of damages recoverable from a farmworker camp operator who is subject to suit pursuant to subsection (3) of this section who violates ORS 658.705 to 658.850 is actual damages or $500, whichever is greater. [1989 c.962 §18; 1991 c.67 §171; 1995 c.500 §7]

(Miscellaneous)

658.810 Fees. Fees required for farmworker camp indorsements shall be established under ORS 658.413. [1989 c.962 §5a; 1995 c.500 §8; 1999 c.399 §8]

658.815 Disposition of other moneys. (1) All farmworker camp indorsement fees received by the Commissioner of the Bureau of Labor and Industries under ORS 658.810 shall be credited to the Bureau of Labor and Industries Account. Notwithstanding ORS 651.160 (1) and 658.413 (4), moneys credited to the account under this subsection are continuously appropriated for the enforcement of ORS 658.715 to 658.850.

(2) Moneys collected from civil penalties imposed by the commissioner pursuant to ORS 658.850 for violations of ORS 658.750 shall be credited to the Farmworker Housing Development Account of the Oregon Housing Fund.

(3) Except as provided in subsection (2) of this section, all moneys other than fees described in ORS 658.413 received by the commissioner under ORS 658.715 to 658.850 shall be credited to the General Fund. [1989 c.962 §12; 1991 c.67 §172; 1999 c.399 §9; 2001 c.310 §6]

658.820 Rules; proceedings. (1) The Commissioner of the Bureau of Labor and Industries may adopt rules necessary for the administration of ORS 658.705 to 658.850.

(2) All rules adopted under ORS 658.715 to 658.850 shall be issued in compliance with ORS 183.310 to 183.410.

(3) All proceedings relating to the issuance, revocation, suspension, renewal or refusal to renew an indorsement to act as a farmworker camp operator shall be conducted under ORS 183.310 to 183.497. [1989 c.962 §13; 1991 c.67 §173]

658.825 Determination of violation of other provisions required. The Commissioner of the Bureau of Labor and Industries shall not revoke, suspend or refuse to renew or reissue an indorsement under ORS 658.740 or any rule adopted thereunder, or assess penalties under ORS 658.850 for violations of ORS chapter 654 or any rule adopted thereunder unless the Department of Consumer and Business Services has determined that the operator has failed to comply with ORS chapter 654 or any rules adopted thereunder. [1989 c.962 §19; 1995 c.500 §9]

658.827 Department to report violations. In pursuing its duties under ORS chapter 654, the Department of Consumer and Business Services shall report to the Bureau of Labor and Industries any violation of this chapter observed by department staff. [1989 c.962 §16]

658.830 Interagency coordination agreement. The Department of Consumer and Business Services and the Commissioner of the Bureau of Labor and Industries shall adopt an interagency agreement to coordinate the application of all laws the department and the commissioner are charged with administering with respect to farm labor camps. [1989 c.164 §15]

Note: 658.830 was added to and made a part of 658.705 to 658.850 by legislative action but was not added to any other series therein. See Preface to Oregon Revised Statutes for further explanation.

658.850 Civil penalties. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $2,000 for each violation of any provision of ORS 658.715 to 658.850.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(3) The commissioner may suspend a penalty issued under ORS 658.705 to 658.850 if the deficiency is corrected within 15 days of the notice of violation. [1989 c.962 §10; 1991 c.67 §175; 1991 c.734 §62]

658.990 [Repealed by 1953 c.694 §30]

PENALTIES

658.991 Criminal penalties. (1) Violation of ORS 658.005 to 658.245 is punishable, upon conviction, by a fine of not more than $250 or by imprisonment in the county jail for not more than 60 days, or by both.

(2) Violation of ORS 658.452 is a Class A misdemeanor.

(3) Any person who intentionally defaces, alters or changes a license or permit to act as a farm labor contractor, or who uses the license or permit of another or knowingly permits that person's license or permit to be used by another, or who acts as a farm labor contractor without a valid license or permit under ORS 658.405 to 658.503, is guilty of a Class A misdemeanor.

(4) Any person who willfully swears or affirms falsely under ORS 658.415 (1), (2) or (3) in regard to any matter concerning which an oath or affirmation is required, or who solicits or induces another person to do so, whether or not the matter sworn to or affirmed is material, is guilty of a Class A misdemeanor.

(5) Violation of ORS 658.440 (1)(f), (g) or (h), (2)(c) or (3)(a), (b), (c), (e), (f) or (g) is a Class C misdemeanor.

(6) Any person who violates the provisions of ORS 658.410 (1) or 658.417 (1) is guilty of a Class C felony if:

(a) The person has previously been convicted of violating the provisions of ORS 658.410 (1) or 658.417 (1);

(b) The person's license to act as a farm labor contractor has been suspended, revoked or denied; or

(c) The person is acting in violation of an outstanding order of any court of competent jurisdiction arising out of the enforcement of ORS 658.405 to 658.503. [1953 c.694 §26; subsections (2) and (3) enacted as 1959 c.395 §14; 1961 c.390 §6; 1971 c.743 §406; 1975 c.397 §6; 1979 c.883 §4; 1983 c.654 §10; 1989 c.164 §6]